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THE ROLE OF PROCUREMENT REVIEW BODY IN PUBLIC PROCUREMENT INEFFICIENCY

Monitoring period

June 1, 2018 - May 31, 2019



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LIST OF ABBREVIATIONS

| | |
|--------------|---|
| CA | Contracting Authority |
| CAO | Chief Administrative Officer |
| CBK | Central Bank of Kosovo |
| CEO | Complaining Economic Operator |
| CPV | Common Procurement Vocabulary |
| EO | Economic Operator |
| KEC | Kosovo Energy Corporation |
| LPP | Law on Public Procurement |
| MH | Ministry of Health |
| MI | Ministry of Infrastructure |
| MIA | Ministry of Internal Affairs |
| PPRC | Public Procurement Regulatory Commission |
| PRB | Procurement Review Body |
| ROGPP | Rules and Operational Guidelines for Public Procurement |
| TAK | Tax Administration of Kosovo |
| TDS | Tender Data Sheet |
| TD | Tender Dossier |
| TEAM | Transparent, Effective and Accountable Municipalities |
| USAID | United States Agency for International Development |

SUMMARY

This report looks into the decisions and practices of the PRB, in order to assess the effectiveness of the implemented measures and the level of impartiality of PRB in administering justice to parties.

Similarly, to the previous report, findings here also indicate a lack of consistency in a number of PRB decisions that contradict previous decisions. The PRB does not seem to have practiced a methodology of referring to previous decisions when handling complaints. The application of such practice would have likely reduced the number of inconsistent decisions. D+ has continuously highlighted the need for greater standardization of PRB decisions, in order for decisions to be reasonably predictable by parties, as a result of precedents.

The number of complaints in 2018 increased significantly, with 210 more complaints filed than in 2017. A similar trend of complaints is also expected in 2019. This represents a 38% increase in the workload of PRB, which operates with minimum resources, with only three out of the five members that PRB is required to have by law, currently in place, as the term of the others expired. This also causes delays in decision-making. The average time to take a decision in the period between June 1, 2018 - May 31, 2019 was 40 days, while the legal deadline is 34 days.

Another issue addressed in this report, which was also a frequent dilemma in PRB, is the review of cases where the claims included no violation of the Public Procurement Law, but of other specific laws or bylaws. For instance, in many decisions, PRB reasoned that the Tender Dossier failed to require compliance with the Labor Law and, consequently its noncompliance does not constitute a violation to PRB, unless explicitly requested by the TD. Whereas in one case, it stated that the complainant economic operator (EO) did not bid according to vehicle insurance tariffs as determined by the Central Bank of Kosovo (CBK), although the tariffs were not

requested in the TD. This is just one example of how PRB decisions on issues of the same essence are decided differently by the panel. Moreover, there are cases where the panel does not take a final decision on an issue but rather delays the matter by returning the case for reevaluation thus transferring the responsibility back to the contracting authority.

Another issue addressed are the erroneous recommendations that in some cases have been provided by experts. The panel, lacking a detailed technical background in certain areas, in some cases takes decisions entirely based on the recommendations of experts, who in certain cases have made erroneous recommendations ranging from simple mathematical calculations to stating that a document was not requested in the TD, while in fact it was.

This report also provides recommendations on avoiding inconsistent decisions, black-list decisions, monitoring and controlling expert recommendations, increasing transparency and the need for better cooperation with the prosecution.

INTRODUCTION

A company which claims to have been declared non-responsive in a procurement activity of a public authority, in violation of the rules and practice in public procurement, should have the right to appeal. In Kosovo, companies have such a possibility through the PRB, which is mandated to protect them from unlawful decisions of contracting authorities.

D+ has been monitoring open sessions of PRB since December 2016. The purpose of this monitoring is to ensure consistency and impartiality in decision-making. Through previous and current reports, D+ aims to improve the quality of decision-making in PRB, to ensure that decisions are taken in a prompt and fair manner for all parties. In addition, D+ strives to ensure that the PRB reasons its decisions well, so that a decision doesn't only serve the party in proceeding, but also constitutes a precedent for future cases.

In its four monitoring reports, D+ found that the biggest problem is the inconsistency in decision-making. Lack of an internal database led PRB to have many issues with the consistency of decisions. In addition to this, the current system where a company complains, the PRB returns the tender for reevaluation, and then the same company complains again, does not achieve the purpose of the law for an efficient procurement. In 2019, the process of drafting a new law started to address some of the issues with the current law. D+ is part of the working group, advocating, among other things, for the PRB to decide who should be the winner of the tender, designating responsive and non-responsive companies.

This system affects the daily lives of citizens causing difficulties. The current system has caused some villages in the municipality of Dragash/Dragaš to wait for water supply for three years, some villages in the municipality of Ferizaj/Uroševac had to wait for three years to have a paved road,

and the municipality of Gjakovë/Đakovica was unable to buy a GPS device for a year, among others.

Another remaining issue is the ineffective blacklist. Under the current system, a company may be disqualified from procurement for a specified period and its owners punished, but the company may continue to participate in tenders again. There is no information technology system where such companies would be blocked from having access to the e-procurement system. PRB's interpretation of the current law is that a company is not disqualified if it violates the terms of the contract or withdraws after being selected as the winner. In one case, the PRB approved the complaint of a company, although it found that its owner had been punished for fraud and forgery in an earlier decision of the PRB¹.

¹ PRB decision 232/16 established that the owner of Conex Group was convicted of forgery, fraud and false declaration under oath. However, the PRB approved the complaint in the decision 355/17 for the Prishtina/Priština-Gjilan/Gnjilane highway.

PRB BETWEEN JUNE 2018 - MAY 2019

In the period between 1 June 2018 to 31 May 2019, D+ monitored the open hearings of PRB. A total of 779 decisions were taken during this period. After monitoring sessions, panel decisions, expertise and complaints, D+ found that in this period, PRB took the following types of decisions:

Out of 779 decisions, 429 were in favor of complainant EOs³. In 29 cases, the complaints were withdrawn, in 42 cases the panel issued a notice⁴ and 279 decisions were against the complainant EO⁵. In 27 decisions in favor of complainant EOs, PRB also issued orders for failure to comply with previous decisions by contracting authorities (CA).

| Decision | Decisions of the PRB panel | Expert recommendation |
|---|----------------------------|-----------------------|
| Approval of complaints | 134 | 182 |
| Partial approval of the complaint | 295 | 248 |
| Withdrawal of complaint | 29 | - |
| Notice | 42 | - |
| Adjudicated case | - | 11 |
| Dismissal of the complaint | 45 | 203 |
| Complaint inadmissible, decision of the CA confirmed | 18 | 11 |
| Complaint time-barred | 10 | 4 |
| Partial approval of complaint, decision of the CA confirmed | 206 | 96 |
| TOTAL | 779 | 755 |

TABLE 1: Number and type of PRB decisions between June 1, 2018 - May 31, 2019

² Adjudicated case or Res Judicata is when the PRB took an earlier decision on the complainant's allegations. If the same company complains again under the same allegations, then the expert, as per the PRB Rules of Procedures, qualifies the complaint as an adjudicated case.

³ A decision in favor of a CEO includes the partial approval and approval of the complaint.

⁴ The panel issues a notice when the complaining EO and the contracting authority agree with the recommendation of the review expert.

⁵ A decision against the CEO is when the complaint is rejected, declared inadmissible, time-barred and when the complaint is partially approved, but the contract award decision is upheld.

In terms of the decisions mentioned in Table 1, for 707 decisions a hearing was held, 643 (91%) of which were open hearings, while 64 (9%) were closed.

E0 complaints are mainly filed regarding the contract notice, contract award notice and tender cancellation notice, with the largest number of complaints about contract award notices. However, there are many cases when EOs complain

about the contract award notice, but the complaint lists many points pertaining to the tender criteria, in which case the EOs must appeal the contract notice.

| Type of complaint | Number |
|--|--------|
| Complaint against the contract notice | 39 |
| Complaint against the contract award notice | 581 |
| Complaint against the tender annulment notice | 152 |
| Complaint against the qualification notice | 1 |
| Complaint against the scoring notice | 1 |
| Complaint against the elimination notice | 2 |
| Complaint for failure to implement PRB decisions | 3 |

TABLE 2: Breakdown of complaints by type of complaint for the period June 2018 - May 2019

Differences between expert recommendations and panel decisions

In 429 decisions in favor of complainant companies, experts gave opposing recommendations in 124 cases, or 29%. In 279 panel decisions against the complainant companies, experts recommended the opposite in 91 cases, or 32.6% of them. Overall, panel decisions and expert recommendations do not match in 215 cases or 30.4%.

The table above indicates that in the complaints with experts Basri Fazliu and Hysni Muhadri, there is a significant difference between the recommendation and the decision of the panel. In some cases, the numbers between expert recommendations and panel decisions match, but this does not mean that there is 100% compliance, as experts could have issued a recommendation in favor of EOs for another tender, while the panel had decided in favor of EOs in other tenders.

| Expert | Recommendations in favor of EO | Recommendations against EO | Decisions of the panel in favor of the EO | Decisions of the panel against the EO |
|-------------------|--------------------------------|----------------------------|---|---------------------------------------|
| Abetare Prebreza | 18 | 13 | 18 | 13 |
| Agim Sheqiri | 22 | 10 | 23 | 9 |
| Basri Fazliu | 25 | 34 | 50 | 17 |
| Bujar Sopi | 15 | 15 | 15 | 15 |
| Es'heme Beka | 7 | 4 | 5 | 6 |
| Hasim Krasniqi | 29 | 23 | 30 | 20 |
| Hysni Muhadri | 20 | 24 | 26 | 18 |
| Muhamet Kurtishaj | 16 | 22 | 17 | 21 |
| Nazmi Statovci | 8 | 6 | 11 | 3 |
| Qazim Hoxha | 5 | 9 | 7 | 7 |
| Safije Saramati | 18 | 8 | 20 | 6 |
| Sahit Beqiri | 26 | 10 | 22 | 14 |
| Teuta Krasniqi | 5 | 6 | 8 | 3 |
| Visar Basha | 32 | 28 | 32 | 28 |
| Visar Bibaj | 39 | 16 | 36 | 19 |
| Vjollca Balaj | 7 | 4 | 8 | 3 |
| Xhevdet Bushi | 15 | 7 | 16 | 6 |

TABLE 3:

Recommendations in favor and against EOs according to experts and panel decisions for those recommendations. Only experts with at least 10 recommendations are listed in the table.

Delays in decision-making

After the receipt of the complaint, the PRB has 34 days to take a decision and publish it on its website. From June 1, 2018 until May 31, 2019 the PRB made 779 decisions, with average time from the date of complaint to the date of pub-

lication of 40 days, which exceeds the legal deadline of 34 days. Compared to previous years, the trend of delays in decision-making is on the rise. This may be related to the increase in the number of complaints and the absence of two board members.

AVERAGE DECISION-MAKING TIME (IN DAYS)

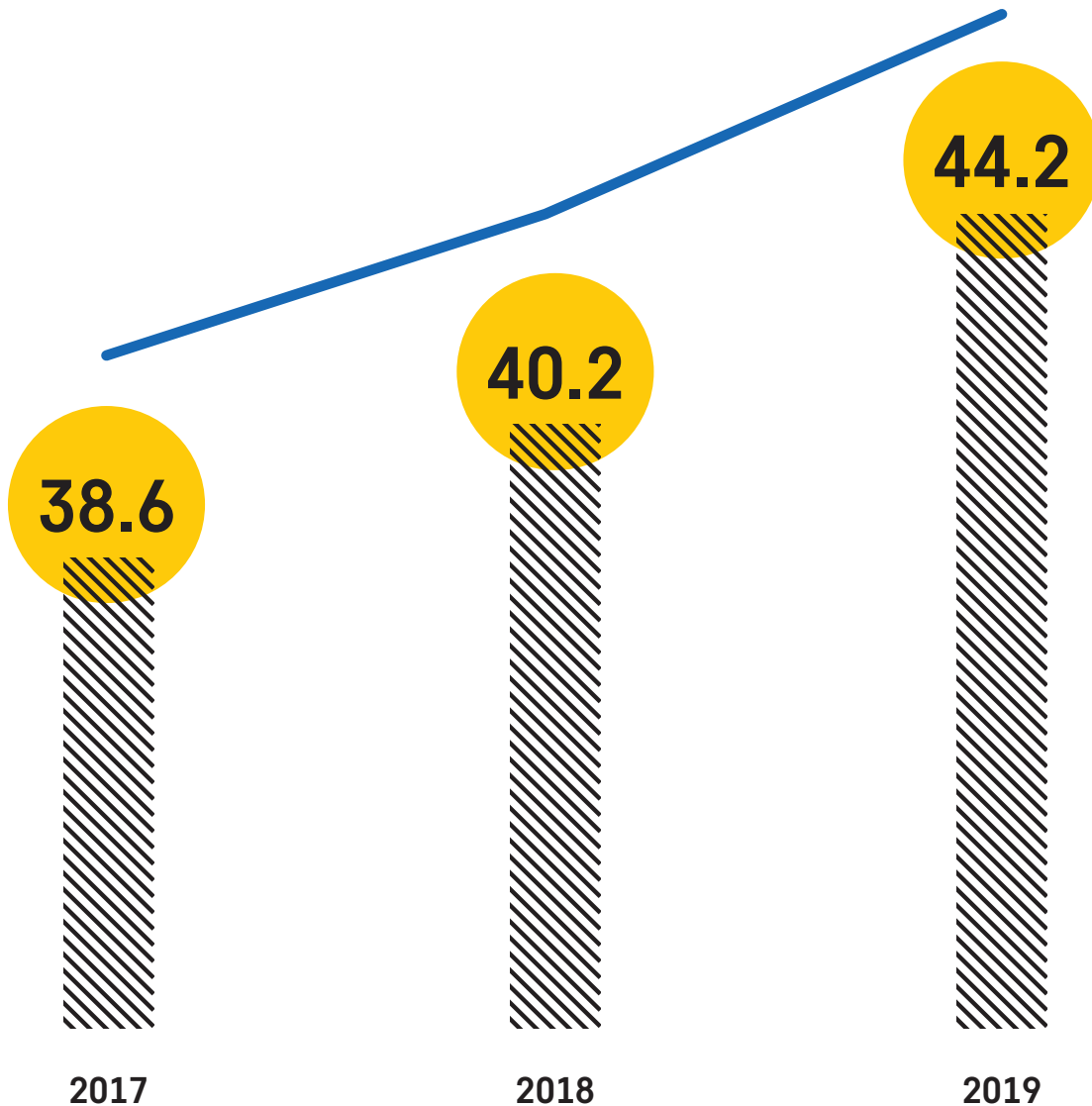


FIGURE 1 The average time from the date of complaint to date of publication of decision, broken down by year. In the period from June 2018 – May 2019 the average time is 40 days.

Transparency

During this monitoring period, there have been improvements regarding transparency compared to previous reports. The number of open hearings has increased, there are no problems with access to documents and the rationale for the decisions is more detailed. However, as mentioned in previous D+ reports, partial publication of complaints and expertise remain a challenge.

In this period, parties have been generally notified in a timely manner. However, in some limited cases, other procedural errors also occurred, such as emails sent to the wrong address, causing absence of either party from the hearing. On the other hand, publication of announcements for sessions on the PRB website are usually published on time, except in some cases when the announcement is published the day the session is held. This is mostly due to the way the current website is designed which does not allow for the placement of more than six notifications in the session notification section, and sometimes more than six hearing sessions are held per day. However, the absence of parties in sessions because they were not notified or for unknown reasons does not prevent the hearing. The hearing is postponed in the absence of parties only in rare cases, at the request of the parties to the panel. In many cases, the experts themselves are absent, a practice that has become common in 2019. PRB should practice withholding payment to external experts who are absent from hearings, unless they can justify their absence accordingly.

As noted in past D+ reports, there is a lack of transparency in the publication of complaints, where only the first two pages are published, excluding EO's claims. Another document which is not made public is the expertise delivered to the parties and the panel. Although the PRB publishes the decisions, their electronic format is not machine-readable and does not allow searches within a decision to find the required words more easily.

On a positive note, as a result of continuous advocacy by D+, the number of open hearings increased which led to a higher number of monitoring by both non-governmental organizations and the media and citizens.

Also, PRB is expected to change its website this year to allow more opportunities for its users. In addition, live broadcasting of open sessions, with the support of the USAID project for Transparent, Effective and Accountable Municipalities (TEAM), will continue and will expand with the launch of the new website.

Reevaluation, Reevaluation, Reevaluation

Of more than 1,500 decisions analyzed since January 2017, D+ has noted that in some decisions, the panel did not provide sufficient reasoning for claims, shifting the responsibility back to the CA by returning the tender for reevaluation. The usual reasoning of the panel is that if the CA has a question for any document, it may ask for clarifications under Articles 59 and 72 of the Public Procurement Law (PPL). By not giving a definitive answer to a complainant, the panel gives the opportunity to the EO to file an additional complaint.

One of the cases where the panel gave such reasoning is the tender for cleaning and maintenance of roads of the municipality of Viti/Vitina. The panel had issued two decisions and an ordinance for this tender. In ordinance 448/18⁶, with El Bau as complainant, against the decision to cancel the tender by the municipality, one of the claims related to 10,000-liter capacity water tank trucks. According to the panel, El Bau had this water tank truck, as confirmed by the registration license and a number of photographs. The panel added that if the CA had a question, it could have asked for clarification.

CA implemented the PRB ordinance and awarded the tender to El Bau. However, EO Qendra Kopshtare filed a complaint against this decision. In the claim regarding the water tank truck, the panel only reiterated the complainant EO's claim that El Bau does not have a 10,000-liter water tank truck, but rather an 8,300kg mixer which accounts for 8,200 liters. The panel did not respond to the complainant claim whether the water tank truck was as requested but it provided its reasoning as per the common vocabulary that the CA should analyze the complainant EO's claims and evaluate the bids based on the requirements of the TD⁷. However, in the ordinance, the panel stated that El Bau fulfilled this requirement.

⁶ PRB. Decision 448/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2018/448-18uzv.pdf>

⁷ PRB. Decision 661/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2019/661-18vend.pdf>

The tender for GPS supply, initiated by the Municipality of Gjakovë/Đakovica, was sent to PRB four times. Three times it was returned for reevaluation, and the fourth time it was canceled.⁸ In all its complaints, the only claim of DWH Kosova was that the recommended EO - Ageo & Co - had no authorization from the manufacturer Hi Target. Review expert Visar Bibaj recommended reevaluation in all four complaints of DWH Kosova. In three reevaluation decisions, the panel obliged the CA to seek clarifications related to authorization, which the CA did. In the third decision, ordinance 482/18, the panel found that the municipality of Gjakovë/Đakovica requested clarification related to authorization on email address kyle@hi-target.com.cn and lukecao@hi-target.com.cn. CA received a response from the second email, stating that Ageo&Co had been the distributor for Hi-Target products since 2012. However, the panel also added that according to the official website, the only contact email is sales@hi-target.com.cn, and according to the panel, it cannot be confirmed that Ageo&Co was authorized. However, the panel could have made such verification itself in the first decision, saving significant time and preventing continuous reevaluations. In its last decision, the panel found that the complainant DWH Kosova was also non-responsive, as the tender form was not signed by the authorized person. As a result of ongoing complaints and after four decisions to verify whether Ageo & Co was authorized by Hi-Target or not, Municipality of Gjakovë/Đakovica was unable to purchase the GPS device it needed for one year.

The panel has the right to request clarifications regarding any document, as it did for Decision 80/19⁹ on the claim of Liri Med that their product had a VAT rate of 0% (the panel requested clarifications from the Kosovo Customs). A similar action could have been applied in the tender for the Municipality of Gjakovë/Đakovica, avoiding the one-year complaint-reevaluation-complaint cycle.

Unfounded claims, complaints upheld

During this monitoring period, 779 decisions were made, of which only 45 or 5.78% - were rejected complaints. Table 1 clearly shows a significant difference in the rejection of complaints, between expert recommendations and panel decisions. Of the 203 expert recommendations rejecting the complaints, where if the panel decided the same the complaint fee should have been confiscated, the panel's decision complies with the expert's recommendation in only 40 cases.

In some decisions, although all complainant claims were rejected, PRB partially approved the complaints in order not to confiscate the complaint fee. D+ identified four decisions where the panel did so (654-655/18, 659/18, 681/18 and 170/19). Approving the complaint only to avoid the fee being confiscated encourages companies to file additional complaints, knowing that the likelihood of the complaint being partially approved is very high. In another case, the panel confiscated the complaint fee¹⁰, when in fact the complaint of the EO should have been qualified as time-barred. Company Sporting made a request for review on the 13th day, while the legal deadline was five days. As there was no other claim, the complaint, according to the PRB Rules of Procedure¹¹, should have been disqualified as time-barred and the fee returned to the complainant EO.

8 PRB. Decision 701/18. 2019

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/701-18ven.pdf>

9 PRB. Decision 80/19. 2019

<http://oshp.rks-gov.net/repository/docs/vendimet/2019/80-19%20vend.pdf>

10 PRB. Decision 362/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/362-18vendim.pdf>

11 PRB. Rules of Procedure. Article 33.4. 2017

https://oshp.rks-gov.net/repository/docs/200-17-rregullorja_1.PDF

INCONSISTENT DECISIONS

Many complaints have similarities with each other in terms of appeal claims. This is because many institutions commit unlawful actions which are then repeated by other institutions. These cases may include companies being awarded contracts with wages that are in violation of the minimum wage, or that did not calculate annual leave of employees. In these cases, D+ considers whether PRB handles such complaints with the same standards, and when it observes that PRB took a decision contradicting a previous one, D+ identifies it as an inconsistent decision.

In the following section, we present cases of inconsistent decisions on a number of issues. Inconsistency has negative impacts on many dimensions, including the creation of legal uncertainty in public procurement, loss of trust of parties in PRB, and increased suspected partiality when cases are addressed by experts and the panel.

Net/gross salary decisions

As noted in the D+ report “Unpredictability in Interpretation of the Law on Public Procurement”¹², PRB takes a considerable number of conflicting decisions with respect to complaints about compliance with the Labor Law. In this monitoring period, 26 decisions were identified where one of the claims of the EO included violation of the Labor Law. The issue is whether PRB should consider the claims for non-compliance with the Labor Law, even when the TD does not require such compliance with this law.

When in the issue of non-compliance with CBK tariffs for vehicle insurance in Decision 324/18¹³ the PRB decided to return the tender for reevaluation, although the TD didn’t require compliance with such fees, it set a precedent: even when compliance with a law or regulation is not required in the TD, the panel may request such compliance.

Failure to comply with the Labor Law and the minimum wage leads to workers working under difficult conditions, with long working hours, and hourly wages under the minimum wage. Even when the request for Labor Law compliance is part of the TD and the wage is defined in the file, experts and the panel faced issues in making basic calculations to see whether the complainant or awarded EO will manage to fulfill the obligations towards employees with the prices offered. Elements accounted for in the calculation include: the wage (gross or net), income tax, and pension contribution of the employee and the employer. According to the Labor Law, Article 56.2, the following payments are also made on the basic wage¹⁴:

12 Democracy Plus. Unpredictability in Interpretation of the Law on Public Procurement. 2019 <http://www.dplus-ks.org/wp-content/uploads/2019/07/05-Raporti-i-monitorimit-te-OSHP-ENG-06.pdf>

13 PRB. Decision 324/18. 2018 <https://oshp.rks-gov.net/repository/docs/vendimet/2018/324-18vend.pdf>

14 Law No. 03/L-212 on Labor. Official Gazette of the Republic of Kosovo. 2010. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2735>

2 EMPLOYEES ARE ENTITLED TO ADDITIONAL REMUNERATION IN THE PERCENTAGE OF THE BASIC SALARY AS FOLLOWS:

2.1 **20%**
AN HOUR FOR EXTRA SHIFT;

2.2 **30%**
PER HOUR FOR NIGHT SHIFT;

2.3 **30%**
PER HOUR FOR OVERTIME WORK;

2.4 **50%**
PER HOUR FOR WORK ON NATIONAL HOLIDAYS; AND

2.5 **50%**
PER HOUR FOR WORK ON WEEKENDS.



Calculations based on the values above are neither made by the experts nor the panel.

Net wage + income tax + pension contribution of the employee + pension contribution by the employer + additional payment based on Article 56.2 constitute an expense for the EO.

This is a threshold and bids under it are automatically considered to be abnormally low. Review experts with a background in economics should have no problem with such simple mathematical calculations. Moreover, in cases when experts are not certain of the calculations, they should consult with the Labor Inspectorate within the Ministry of Labor and Social Welfare, as foreseen in the Law on General Administrative Procedure¹⁵.

D+ stresses that the PRB must pay greater attention to violations of specific laws in cases when such a thing is observed. In cases where the PRB does not consider itself competent, it should refer such issues to the relevant institutions, but must ensure that these cases do not remain unaddressed. Moreover, General Terms of Tender Dossiers state that an EO must operate in accordance with the applicable laws in Kosovo. Article 7.3 of the Tender Dossier for Supplies states



7.3 THE SUPPLIER SHALL RESPECT AND ABIDE BY ALL LAWS AND REGULATIONS IN FORCE IN THE REPUBLIC OF KOSOVO AND SHALL ENSURE THAT ITS PERSONNEL, THEIR DEPENDENTS, AND ITS LOCAL EMPLOYEES ALSO RESPECT AND ABIDE BY ALL SUCH LAWS AND REGULATIONS¹⁶.

¹⁵ Article 34, Administrative assistance 1. A public organ may request the assistance (herein after referred to as "administrative assistance") from another public organ, for the performance of one or more necessary procedural actions, within an administrative proceeding. 2. The administrative assistance is requested: 2.1. if for justified reasons such actions cannot be performed by the requesting organ; 2.2. if the performance of such actions by the requesting organ is not effective, or if its costs would be significantly higher than those that would result from the performance by the organ whose assistance is requested; 2.3. when knowledge of facts, documents or other evidence in the possession of the other organ is required; 3. If not provided otherwise by law, a public organ may choose the organ to be requested for administrative assistance, based on the cost-efficiency principle.

¹⁶ Public Procurement Regulatory Commission. B15 Tender Dossier - Supply - Open Procedure. 2016. <https://krpp.rks-gov.net/krpp/PageFiles/File/STR-forms2016/Shqip/B15.docx>



The same is provided in Article 8.2 of the General Terms of the Tender Dossier for Works.

Below are some of the decisions where there is inconsistency with respect to compliance with the Labor Law.

Rojet e Nderit v. State Prosecution, 415/18

In the tender “Physical Security of the buildings of Kosovo Prosecutorial System,” the panel decided that the tender be returned for reevaluation with the reasoning that the CA should prove whether the winning EO can pay the employees with the offered price, as per the requirements of the TD and the contract notice¹⁷. This PRB decision was issued even though such a thing was not required explicitly in the TD. Review expert, Hasim Krasniqi recommended the rejection of the complaint as the CA had not requested in the TD compliance with the Labor Law.

After reevaluation, the CA again awarded the tender to the same EO, while EO Rojet e Nderit again filed a complaint. The panel returned the tender for reevaluation once again¹⁸, but with an opposing reasoning. While the first decision had stated that the CA must confirm whether the winning EO would be able to pay the workers with the prices offered, the second decision stated that the TD had not required compliance with the Labor Law and minimum wage rule. In the same decision, two paragraphs above, the panel stated that the CA had not complied with the previous decision.

The review expert changed his recommendation in the second decision by recommending that the appeal be partially upheld, and the tender returned for reevaluation. While in the first decision, the panel had stated that the Labor Law and the minimum wage were not required to be observed, in the second decision, based on the reasoning of the panel given in the first decision, he stated that the CA failed to prove whether the winning EO would be able to pay the workers with the offered price. In fact, in the second decision, the

expert’s recommendation and the reasoning of the panel, had the same text.

After the re-evaluation, the State Prosecutor’s Office annulled the tender with the reasoning that all offers were non-responsive.

Luani v. Kosovo Judicial Council, 138/19

In another decision, the panel rejected the claim of Company Luani for non-compliance with the Labor Law, finding that the TD did not request compliance with the Labor Law¹⁹. The same opinion was also provided by the review expert, Hysni Muhadri.

This decision contradicts the decision of the State Prosecutor’s Office, since the panel in that case approved the complaint of the EO, although there was no requirement to comply with the Labor Law. Whereas in decision 138/19, the panel rejected the appeal as compliance with the Labor Law was not requested in the TD.

Decisions to exceed the planned budget

A framework contract is used when the CA does not know the exact quantity of products to be purchased, and this type of contract allows for contract quantities to be increased or decreased by up to 30% throughout the implementation of the contract, depending on the needs of the CA. However, even for framework contracts, an estimate amount is provided, which serves as a ceiling above which the CA may not accept bids, according to the right stipulated in Article 62 of the PPL. In some cases, the PRB returned tenders for reevaluation even though the bids of the complainant EO significantly exceeded the estimated value. The reasoning of the panel in a decision was that, as it is a framework contract, the CA may not spend all the estimated value and the moment the estimated value is spent, the contract will be terminated. In some other decisions, the panel rejected the complaint but did not use the same reasoning.

17 PRB. Decision 415/18. 2018.

https://oshp.rks-gov.net/repository/docs/vendimet/2018/415-18vendim_1.PDF

18 PRB. Decision 627/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/627-18vend.pdf>

19 PRB. Decision 138/19. 2019

<https://oshp.rks-gov.net/repository/docs/vendimet/2019/138-19vend.pdf>

Bojku Hidraulik v. KEK, 555/18

The tender "Supply of spare parts for Iveco mechanism", was canceled by KEK, as the bid of Bojku Hidraulik was 452,777 euros, while the estimated amount was 360,000 euros. The price difference was 92,777 euros or 25.77% higher. Bojku Hidraulik complained to the PRB alleging that Article 56.10 of the Rules and Operational Guidelines for Public Procurement (hereinafter "Guidelines") relating to the framework contract was violated. The panel approved the complaint and returned the tender for reevaluation²⁰. The reasoning of the panel was that, since this was a framework contract, the CA was not obliged to spend all the funds and if the estimated value was exceeded, the contract would automatically be terminated, as stated in Article 56.10 of the Guidelines. The panel also noted the importance of this tender but came short of giving a detailed explanation.

Review expert, Visar Bibaj, citing Article 62 of the PPL, recommended the rejection of the complaint after the complainant EO had exceeded the estimated value.

Following the reevaluation, KEK again canceled the tender process, on the grounds that there were no responsive bids. Again, Bojku Hidraulik filed a complaint against this decision, and the PRB, in addition to approving the complaint, issued an ordinance as the CA had failed to implement decision 555/18²¹. The panel gave the same reasoning regarding the non-compliance with Article 38 of the PPL, which speaks of framework contracts. As a result of the ordinance, CA signed the contract with Bojku Hidraulik.

Based on the PRB's interpretation regarding the framework contract for this tender, the CA will pay more than the estimated value. The contract states that the CA will order products to the amount of the planned budget, based on the ordinance issued by the PRB. However, Section 56.10 of the Guidelines states that a deviation of plus/minus 30% is allowed for the total indicative quantities or total indicative value of the contract, but not for the estimated contract value.

20 PRB. Decision 555/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2018/555-18vend.pdf>

21 PRB. Decision 751/18. 2019
<https://oshp.rks-gov.net/repository/docs/vendimet/2019/751-18vend.pdf>

22 PRB. Decision 724/18. 2019
https://oshp.rks-gov.net/repository/docs/vendimet/2019/724_18%20vendim.pdf

23 PRB. Decision 404/17. 2017
<https://oshp.rks-gov.net/repository/docs/vendimet/2017/404-17%20vendim.pdf>

ICN & BM v. Ministry of Health, 724/18

With decision 724/18, the panel decided to confirm the cancellation of the tender by the CA after the EO exceeded the estimated value by 130%²². As with KEK, this tender was a framework contract. Although the complainant did not invoke Article 38 of the PPL, the panel could have taken this into account and decided as it had in decision 555/18. In this case, the panel cited Article 62, which allows for the cancellation of a tender for exceeding the budget. In the decision on KEK, the overrun was apparent and furthermore Article 62 allows for CA's discretion to accept an offer above the estimated value.

A CA may poorly plan the estimated value of the tender but may not be forced to enter into a contract above that value. The PRB's interpretation of the framework contract could potentially pave the way for very high-priced bids. After being eliminated, these companies would complain to the PRB for violation of legal provisions regarding the framework contract. The approval of their complaints would allow for these companies to win the tender through PRB decisions, while the contract would be implemented to the extent of the CA budget. This is convenient for companies as the contract value is lower in this case, but unit prices remain the same..

Liri Med v. Ministry of Health, 404/17

A more direct comparison can be made for decisions 724/18 and 404/17 (and two other subsequent decisions), both for the Ministry of Health (MoH) tenders for supply with medicines from the essential list. In decision 404/17, the panel approved Liri Med's claims, returning the tender for reevaluation for the lots that had been canceled for budget overrun.²³ Another reason from the panel was that Liri Med submitted evidence that the prices offered were market prices, while the panel requested the CA to conduct market research. Review expert, Muhamet Kurtishaj also recommended the reevaluation of the tender, as according to him there was a residual budget because contracts were not signed for all lots. However, the expert did not take into consideration that the CA had provided estimated values per lot.

After reevaluation, the CA again canceled the lots for the same reason (exceeding the estimated value) and Liri Med again filed a complaint. This time, the expert changed his mind without giving any justification, saying that the claim that there was remaining budget stands. However, the Chief Administrative Officer (CAO) did not approve the additional budget. The fact that the CA canceled the tender implies that the CAO did not approve the additional budget the first time, otherwise if he had approved the additional budget, the contract would have been awarded to Liri Med. In the first recommendation, the expert also mentioned the public interest, while in the second he reasoned that CA could not enter into contractual obligations without sufficient budget. The expert would have to explain why he changed his position in his two recommendations. The panel again decided to approve the complaint and return the tender for reevaluation²⁴ reasoning that the CA failed to undertake market research and added that there were about 700,000 euros remaining of the planned total.

After reevaluation, the CA canceled the tender again, leading Liri Med to lodge another complaint. Contrary to decisions 404/17 and 82/18, the panel annulled the tender on the grounds that the CA provided evidence that Liri Med prices were higher than market prices²⁵. This time, expert Muhamet Kurtishaj recommended the rejection of the complaint, on the grounds that the planned budget was exceeded. In its last decision, the panel reasoned that the CA had conducted a market price analysis and was right to annul the tender, however it obliged the CA again to make accurate price estimates, which the CA had done since Liri Med prices were very high (see table below).

Another contradiction is that in decision 404/17 the panel stated that Liri Med provided evidence that the prices offered were in line with market prices. In its decision 306/18, the panel stated that the CA had provided evidence that Liri Med prices were not in line with market prices. Thus, it is not logical for both parties to be right, given the significant difference between the estimated value and the offered price.

DECISIONS

404/17

AND

82/18

ARE IN DIRECT CONTRADICTION WITH
DECISION

724/18

WHERE THE PANEL REJECTED THE COMPLAINT OF ICN & BM ON THE GROUNDS THAT IT EXCEEDED THE BUDGET.

According to the PRB database on decisions²⁶, there are 11 decisions in the last two years where the PRB returned the tender for reevaluation even though there was a budget overrun. Of these 11 decisions, five are Liri Med complaints.

It can be considered that these two decisions, in addition to having a large inconsistency, have not treated the EOs fairly. The tenders to which Liri Med and ICN & BM complained have much in common: both are framework contracts, both provided an estimated value per lot, in both tenders the bids of the companies exceeded the estimated value per lot, and both companies claimed that their prices are market prices. However, the decision for Liri Med was reevaluation, while for ICN & BM, the decision was for rejection.

²⁴ PRB. Decision 82/18. 2018
http://oshp.rks-gov.net/repository/docs/vendimet/2018/82-18vendim_1.PDF

²⁵ PRB. Decision 306/18. 2018
https://oshp.rks-gov.net/repository/docs/vendimet/2018/306-18vendim_1.PDF

²⁶ Democracy Plus. Database of PRB decisions. Accessed on 1 June 2019
<http://oshp.dplus-ks.org/vendimet>

| | Lot | Estimated value (In Euros) | Bid (In Euros) | Exceeding the estimated value (In %) |
|----------|------------|---------------------------------------|---------------------------|---|
| ICN&BM | 23 | 4,010 | 9,624 | 140 |
| Liri Med | 6 | 36,036 | 117,936 | 227 |
| | 8 | 10,880 | 29,376 | 170 |
| | 9 | 20,700 | 136,800 | 560 |
| | 12 | 492 | 53,136 | 10700 |
| | 16 | 190,320 | 198,806 | 4.46 |
| | 34 | 1,950 | 22,950 | 1076 |
| | 39 | 32,340 | 95,515 | 195 |
| | 40 | 10,400 | 34,560 | 232 |

TABLE 4: Estimated value, company bids and budget overrun in percentage

Budget overrun - unfair treatment

Below are the cases where the budget was exceeded. However, in these decisions, unlike in those above, the element of unfair treatment of EOs by the CA is included.

Liri Med v. Ministry of Health, 113/18

As mentioned above, there are some decisions where the panel approved Liri Med's complaints on budget overruns. In the case of decision 113/18, the situation is slightly different. In another bid for the supply with essential medicines, Liri Med's bid exceeded the budget for lots 4, 8, 10, 17, 19, 20. As there were no other bids, the CA cancelled the tender on grounds that the planned budget was exceeded. Liri Med complained to the PRB, which approved the complaint based on the principle of unfair treatment²⁷. The CA, for Lot 12, which was won by company Santefarm, had approved the additional budget, as the bid was 8% higher than the estimated value. The panel described this as discrimination and unfair treatment of Liri Med

²⁷ PRB. Decision 113/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/113-18vend.pdf>

²⁸ PRB. Decision 37-41-43-44/19. 2019

<http://oshp.rks-gov.net/repository/docs/vendimet/2019/37-41-43-44-19vend.pdf>

Medica v. Ministry of Health, 41/19

For another tender, supply with medical equipment, the panel decided differently²⁸. The claim of EO Medica was that the CA had approved an additional budget for another lot, while lot 3, for which Medica had submitted a bid, was cancelled. However, in five other lots, the CA had approved additional budget. In its reasoning (which is textually the same as the expert's recommendation), the panel stated that EO Medica exceeded the estimated value and the CAO did not approve the additional budget. If the panel had considered the decision for Liri Med, it could have decided similarly in the Medica case. Other than being inconsistent, these two decisions can be interpreted as if the PRB is favoring the company Liri Med, since in two cases its complaint was approved, while on the same issue, it was rejected for other companies.



Every time when the complaint alleges budget overrun, the panel should reject the complaints, as it has reasoned in decision 41/19:

“However, pursuant to Section 62, respectively paragraph 1.2 of PPL, it is the competence of the CA to annul the procurement activity if all tenders contain prices that substantially exceed the CA budget for the procurement activity.”

By returning them for reevaluation, as seen above in the Liri Med decision, the panel only lost time as the CA again cancelled the tender. The CA may have been wrong in budget estimates, and in this case, PRB could have ordered the tender to be cancelled, but not to be returned for reevaluation.

Decisions on complaints regarding the Tender Dossier criteria

It often happens that, when drafting the TD, CAs set criteria that favor a particular manufacturer or, at worst, require a specific product of a manufacturer without adding the word “equivalent to”. Complaints about the TD criteria should be made at least five days prior to bid opening, as stipulated by Article 108/A of the PPL.

Carpet v. Assembly of Kosovo, 14/18

Company Carpet complained to the PRB against the decision of the Kosovo Assembly to award the contract to Company Gjini. Carpet claimed that the technical specifications of the Tender Dossier were 100% tailored to Company Gjini, calling upon Article 28 of the PPL which provides that CAs shall not design specifications that favor any particular manufacturer. The CA can do this only if it adds the words “equivalent to”. Review expert Visar Basha said that Carpet should have filed a

complaint prior to the bid opening, pursuant to Article 108/A of the PPL, and did not consider the complaint claims for adjustment of criteria, but rather only recommended the rejection of the complaint.

The panel agreed with the opinion of the expert and decided to reject the complaint, considering that complaints regarding the criteria must be filed prior to the opening of bids²⁹. With this decision, PRB established a standard of not addressing complaints against technical specifications of the tender unless they are filed within the legal deadline of five days before the opening of bids.

DWH Kosova v. Municipality of Gjilan/Gnjilane, 241/18

The panel took a decision inconsistent with decision 14/18, related to the complaint of DWH Kosova against the decision of the Municipality of Gjilan/Gnjilane, to award the contract to EO Ageo-co, after deciding to cancel the tender³⁰. DWH Kosova had complained regarding the TD criteria, stating that the technical specifications were tailored to a specific company but had done so after the opening of bids, and after Ageo&Co was awarded the contract.

Expert Abdurrahman Çunaku recommended the annulment of the tender because the CA, in the specification, had used the name of a manufacturer and, according to him, this was in contradiction with Article 28 of the PPL. The CA acknowledged they requested the manufacturer’s name in the line for batteries, since only that battery would fit in the device the CA was using. In its reasoning, the panel stated that Article 28.7 of the PPL was breached, which in fact was not the case, as no other battery would fit the equipment used by the Municipality. However, had the panel used the reasoning under Article 108/A it would have confirmed the decision of the CA for the contract award as DWH Kosova had failed to file a complaint regarding the criteria prior to bids’ opening.

Since January 2017, PRB took 10 decisions where one of the complaining claims of the EO was related to the criteria of the TD, but the complaints were made after the bids were opened. The complaint was approved only in the decision regarding DWH Kosova, while in other nine complaints, this claim was consid-

²⁹ PRB. Decision 14/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2018/14-18vendim.pdf>

³⁰ PRB. Decision 241/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2018/241-18vend.pdf>

ered unfounded. It is possible that the panel could have been influenced by the expert in the case, as in the other nine complaints, the experts said that the claim regarding adjustment of criteria was unfounded.

Decisions on the abnormally low tenders

Inconsistent decisions were also identified on abnormally low tenders, which are very common in public procurement activities. The disputed issue in this case remains whether PRB delves into price evaluation or not, and whether they are in line with market prices. According to Article 61 of the PPL, a tender may be classified as abnormally low if calculated according to the formula found in Article 3.1 of the Abnormally Low Prices Regulation³¹ approved by the Public Procurement Regulatory Commission (PPRC). However, under Article 3.2 of this regulation, a tender may be considered abnormally low also for other reasons. In both cases, however, the tender may not be rejected without requesting clarification from the bidder regarding the prices offered. If CA agrees with the clarification, it can accept the bid, if not, the tender is rejected as abnormally low. In some decisions, the panel did not share the same view as to whether it is a responsibility of the CA to evaluate tender prices, whether the formula should be used or not, and whether the PRB should make an assessment of whether the clarification provided by the bidder is convincing or not.

The panel, reasoning its decision 26-27/18³², confirmed that the evaluation of the prices is a right of the CA, and the responsibility rests with the CA to treat a tender or tender line as abnormally low. However, this panel's reasoning was not used in other decisions.

In the decision 178/18, the panel returned the tender for re-evaluation in order to verify the prices offered by the EO, if they are indeed real market prices³³. The CA selected company Blendi as the winner, which, according to the formula,

had an abnormally low tender. The CA requested clarification for the prices offered by EO Blendi and was satisfied with the clarifications. The reasoning of the panel can be understood that even if the CA is satisfied with the clarification of the economic operators, it may not be considered by the panel.

In another decision with similar characteristics, namely where the CA had doubts about the winner's prices, it sought clarification and was satisfied by them, the panel took a different decision. EO Auto Beka's complaint was rejected on the grounds that the CA was satisfied with the clarification provided by the winner Universal Commerce³⁴. For these two tenders, it can be seen clearly that the panel only assessed CA's conviction with the winner's prices and did not focus on the tender evaluation according to the abnormally low tender formula.

In another decision, the panel returned the tender for reevaluation and obliged the CA to use the abnormally low tender formula³⁵. The CA used section 3.2 of form B57 which states:

“

3.2 WHERE TENDERS APPEAR TO BE ABNORMALLY LOW FOR OTHER REASONS THAN THOSE INDIVIDUATED IN THE PARAGRAPH 3.1 OF THESE RULES, CONTRACTING AUTHORITIES MAY ASSESS THE RELIABILITY OF SUCH TENDERS AND CONSEQUENTLY REQUEST EXPLANATIONS ACCORDINGLY TO THE FOLLOWING PARAGRAPHS AND ARTICLE 61 OF THE PPL.

31 B57 Rules for abnormally low tenders - amended version. Public Procurement Regulatory Commission.

https://krpp.rks-gov.net/krpp/PageFiles/File/STRforms2016/Shqip/Rregullat%20per%20Tenderet%20Jo-Normalisht%20te%20Ulet_v2_07_07_2016.docx

32 PRB. Decision 26-27/18. 2018.

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/26-27-18vendim.pdf>

33 PRB. Decision 178/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/178-18vendim.pdf>

34 PRB. Decision 202/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/202-18vend.pdf>

35 PRB. Decision 285/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/285-18vend.pdf>

Since the bid of the recommended EO was not qualified as abnormally low according to the formula, the CA used Article 3.2 to eliminate it. The recommended EO had offered abnormally low prices for six products: cappuccino 0.01 euro, chocolate milk 0.01 euro, cheese omelet 0.1 euro, cheese sandwich/cream cheese/sausage 0.05 euro. It is quite obvious that these prices are abnormally low and are not market prices. When it is not possible to classify a tender as abnormally low on the basis of the formula for various reasons (e.g. there are not three responsive bids), then Article 3.2 can be used.

In another case, the panel reasoned that it was a right of the CA to evaluate an abnormally low price, without making any calculations itself³⁶. The panel, in its reasoning, cited Article 1 of the Abnormally Low Price regulation (form B57), which states:

“

1.1 THE SCOPE OF THESE RULES IS TO PROVIDE CLARIFICATIONS TO THE CONTRACTING AUTHORITIES IN REGARD TO THE ABNORMALLY LOW TENDER CONCEPT WHICH REFERS TO THOSE TENDERS THAT, AT FIRST GLANCE, APPEAR TO THE CONTRACTING AUTHORITY UNRELIABLE IF COMPARED TO THE SCOPE OF THE CONTRACT AND, ACCORDINGLY, LIKELY OF A BAD PERFORMANCE OF THE CONTRACT.

It is clear from the decisions above that the panel has no consistency in its decisions on major issues such as abnormally low price tenders. Of all decisions, those on abnormally low prices are the most difficult to predict. The panel may, without any justification, decide that the reasoning of an EO was not satisfactory, or the formula has not been used, or to use the formula when the EO has been eliminated pursuant to article 3.2 of the Regulation, or that the assessment of the prices is a right of the CA.

PRB should take a consistent approach to abnormally low price tenders. If the approach is that the tender evaluation is the right of the CA, then in all decisions on this matter the same reasoning should be used. However, this can be dangerous as not every time CAs see prices of one cent as abnormally low. In some cases, the PRB has done its own price evaluation and according to D+ this is the best way to handle abnormally low price claims. Review experts and the panel should evaluate the tender and whether it is abnormally low or not, rather than considering it as a prerogative of the CA. Another right of the CA is the approval of additional budget on budget overruns, but, as mentioned above this right, in some cases, was not recognized by the PRB.

Decisions on certificate that companies have no debts to TAK

When the CA chooses a winner, prior to signing the contract, one of the documents to be submitted is the certificate issued by the Tax Administration of Kosovo (TAK) confirming that the EO has no outstanding debts to TAK. This request, in addition to being in the TD, is also required by Article 65.4.8 of the PPL. The emphasis of the request is that the certificate must be dated prior to bid opening and this means that an EO, at the time it submits the tender, should not have any debts to TAK. However, in two cases the PRB decided differently on the same issue.

Astraplan v. Ministry of Internal Affairs, 130/17

A complaint to the PRB was filed by Astraplan against the decision of the CA for the award of a contract, claiming that the winning EO, Mercom Company, had debts owed to TAK. Review expert, Visar Bibaj, recommended the tender to be returned for reevaluation, as the winning EO did submit a confirmation that they have an agreement with TAK for the payment of debts in installments, but the certificate was dated after the opening of bids. Indeed, this certificate is only required for the winner, which is selected after the opening of bids, but again, all documents in the case must be dated prior to the opening of bids. In this tender, the CA had requested confirmation that the EO was not late with payment of taxes for the last quarter, prior to the publication of the contract award notice.

³⁶ PRB. Decision 210/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2018/210-18vend.pdf>

The panel decided that the tender should be returned for re-evaluation³⁷ citing Article 65.4.8 of the PPL in the decision's reasoning, which reads:



4. AN ECONOMIC OPERATOR SHALL NOT BE ELIGIBLE TO PARTICIPATE IN A PROCUREMENT ACTIVITY OR IN THE PERFORMANCE OF ANY PUBLIC CONTRACT IF SUCH ECONOMIC OPERATOR:



4.8 IS CURRENTLY DELINQUENT IN THE PAYMENT OF ANY SOCIAL SECURITY OR TAX CONTRIBUTIONS IN KOSOVO OR THE ECONOMIC OPERATOR'S COUNTRY OF ESTABLISHMENT, EXCEPT WHERE SUCH DEBT IS DEEMED TO BE INSIGNIFICANT IN KOSOVO;

The panel also notes that the winning EO submitted a debt settlement agreement with TAK, but that this agreement is dated after the bid opening. As noted by this decision, the PRB made two important conclusions, firstly that the winning EO cannot submit a debt settlement agreement with TAK, but rather a proof that there are no debts thereto, and secondly that the date of this decision must be before the bid opening.

Olti Trasing & Alba Group v. Ministry of Internal Affairs, 391/18

The PRB took a decision contrary to decision 130/17, as it returned the tender for reevaluation, upholding the complaint of Olti Trasing, who had been eliminated because he had not submitted a tax clearance certificate for the last quarter of the period prior to the contract award notice³⁸. The CA, in fact, had declared as winner the consortium Olti Trasing & Alba Group, and had invited them to sign the contract. The consortium member, Alba Group, had brought the tax clearance certificate, which stated that this EO was in debt. According to Article 71.4 regarding consortia, the eligibility requirements, including the tax clearance, apply to all members of the group. Since Alba Group had a certificate stating that it had debts, with no settlement agreement for repayment in installments, the CA proceeded to announce the second EO with the lowest price as the winner.

In its reasoning of the decision, the panel, stated that the CA must seek clarification under Article 72 and considered that the complaining EO had the cheapest price. This decision is not in line with decision 130/17, since in that decision the panel stated that the winning EO could not submit a debt settlement agreement with TAK, dated after the bid opening. The debt settlement agreement means that the EO had debts owed to TAK and was unable to provide a tax clearance certificate dated prior to the opening of the bids. In decision 391/18, the panel stated that clarifications were needed, which in this case implied that the consortium member would provide a debt settlement agreement with TAK dated after the bid opening. The panel also stated that the complainant EO was cheaper than the winning EO, and that the CA should consider the objective of the procurement which is to ensure that public funds are spent more economically. For this tender, Olti Trasing & Alba Group's offer was cheaper by 21,660.02 Euros than the offer of winning EO, Euroing. However, in decision 130/17, the panel did not state that public funds should be spent economically, and in that case, the bid of the winning EO Mercom Company was cheaper by 57,742.8 Euro than the bid of the complainant EO.

The review expert, Hasim Krasniqi, recommended that the panel reject the complaint as Alba Group had failed to provide

37 PRB. Decision 130/17. 2017
<https://oshp.rks-gov.net/repository/docs/vendimet/2017/130-17vend.pdf>
 38 PRB. Decision 391/18. 2018
https://oshp.rks-gov.net/repository/docs/vendimet/2018/391-18vendim_1.PDF

a tax clearance certificate. To support the recommendation, the expert referred to Article 65.4.8 of the PPL and Article 26.8 of the Guidelines.

The issue with this PRB decision is that according to Article 65.4.8 which the panel cited in decision 130/17, an EO is not eligible to participate in a tender if it has debts at TAK. The CA in this case also followed the Guidelines which, according to Article 26.8, pages 61–62, state that if an EO is declared the winner and fails to provide the required eligibility certificates (including the TAK tax clearance), its bid will be rejected, the tender security will be forfeited, and the CA will initiate disqualification procedures (blacklisting) according to Article 99.2 of the PPL³⁹. In this case, the CA only proceeded with the second bidder but failed to request a disqualification procedure. In cases where an EO fails to provide a tax clearance certificate from TAK, the panel must always decide against the EO, as the debt to TAK implies that an EO is not paying taxes regularly, which is a serious violation also envisaged in the PPL, which prevents the EO from bidding if in debt.

After reevaluation, the CA selected as winner the same EO, Euroing. A complaint was filed again at the PRB by Olti Trasing & Alba Group. In the reevaluation procedure, the CA requested clarification from Alba Group in order to provide proof that it had no debts at TAK, but that this certificate should be dated prior to July 4, 2018. This date was after the opening of the bids, but prior to the contract award notice. The review expert stated that the CA could not set a fixed date, but rather should have acted upon the requirement for the winning EO to submit a tax clearance certificate prior to the publication of the contract award notice. In fact, Alba Group had failed to comply with this request when it was selected as tender winner and this document was requested prior to the contract award notice. Alba Group submitted a certificate that it had a debt settlement agreement in installments on October 1, 2018, issued on August 31, 2018. However, the expert, citing the previous decision and considering that the complainant EO had the lowest bid, recommended the tender to be returned for reevaluation.

The panel, based on the expert's explanations, stated that the bid of the complaining EO was cheaper by 21,660.02 Euro. Moreover, the panel stated that the CA cannot set a fixed date to obtain a TAK certificate, and based on this interpretation, argued that the CA acted in violation of Article 56.3 of the PPL which states that an EO cannot be eliminated for a criterion or request that was not required in the Tender Dossier. However, the Tender Dossier requested a tax clearance certificate submitted prior to the publication of the contract award notice. According to Article 26.8 of the Guidelines, the winning EO has five days to provide the eligibility requirement documents. In this case, Alba Group has significantly exceeded the five-day deadline, after it was awarded the contract in early July 2018, while it submitted the TAK certificate as of October 1, 2018. Based on these reasons, the panel again returned the tender for reevaluation⁴⁰.



After reevaluation, the CA annulled the tender for the following reason:

The Procurement Department was unable to implement the reevaluation Decision of the PRB No. 578/18, because AME failed to form the Bid Reevaluation Commission and the PRB was notified on this by CA-MIA, therefore the public procurement procedure was annulled for this activity⁴¹

In both decisions above, the panel took an inconsistent decision. In Decision 130/17, the panel rightly refers to Article 65.4.8 of the PPL. This article should also be used as reference in decision 391/18 as promptness in paying taxes is a condition for participation in the tender. If an EO is selected winner and has due debts to TAK, it is in violation of Article 65.4.8 of the PPL.

39 Public Procurement Regulatory Commission Rules and Operational Guidelines for Public Procurement 2017
<https://krpp.rks-gov.net/krpp/PageFiles/File/2018/04/rruopp13042018.pdf>

40 PRB. Decision 578/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2018/578-18vend.pdf>

41 B10 Cancellation notice of the procurement activity. E-procurement.
<http://bit.ly/2WBltog>

Decisions on highlighting the catalog

Some CAs, for products that are required in bills of quantity, require that the bidder should highlight the product they are bidding for in the catalog. This is required as some companies have voluminous catalogs and the CA wants to know clearly which product was offered. Through two decisions, PRB created inconsistency in decision-making.

ATM Engineering v. KEK, 78/18

In the tender “Supply with spare parts for the analysis of water-vapor measurements” KEK requested the bidders to highlight in their catalog items required in the tender. The selected winner was Inline Engineering, while ATM Engineering filed a complaint against this decision, claiming that the winner failed to highlight the products in the catalog, which was a requirement in the Tender Dossier. Review expert, Visar Basha, recommended the rejection of the complaint on the grounds that the highlighting of catalogs cannot be used as a qualifying criterion. It is important, according to him, that the winning EO has submitted the catalog. The panel confirmed the award of the contract to Inline Engineering⁴² with the same reasoning as that of the expert, except for the added part that “the highlighting of the catalog was not a criterion”.

Kodra AK v. KEK, 158/19

In another decision on the same claim, the panel returned the tender for reevaluation⁴³. Kodra AK complained, claiming that the recommended EO Inline Engineering had not highlighted the requested products in the catalog. The panel, in its reasoning, cited the request of the Tender Dossier to highlight products in the catalog. Since both were KEK tenders, the request was the same in both cases.

The two decisions are contradictory. If, for a requirement that should be listed in the Tender Dossier, the panel states that “even if it is a requirement, it cannot be used as a qualifying criterion” this paves the way for numerous complaints by EOs.

42 PRB. Decision 78/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/78-18vendim.pdf>

43 PRB. Decision 158/19. 2019

<http://oshp.rks-gov.net/repository/docs/vendimet/2019/158-19vend.pdf>

44 Rules and Operational Guidelines for Public Procurement Article 18.3. Public Procurement Regulatory Commission. 2018

<https://krpp.rks-gov.net/krpp/PageFiles/File/2018/04/rruopp13042018.pdf>

45 PRB. Decision 618/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/618-18vend.pdf>

Decisions on number, after the decimal coma

According to the Guidelines⁴⁴, any price is allowed to be listed up two decimal places. If the EO lists more than two decimals, the bid is considered non-responsive and this is done to prevent manipulative prices. An exception is made when the CA states in the Tender Dossier that bids with more than two numbers after the decimal point are allowed. However, the general information section in the Tender Dossier, Article 20.1 states that if the bidder marks more than two decimal places, only the first two numbers will be taken as the basis for calculation. Thus, there is a discrepancy between the Tender Dossier and the Guidelines. As a result, there are two decisions by the PRB that are inconsistent with each other.

Laguna v. KEK, 618/18

Company Laguna complained to the PRB because the CA had eliminated it because the prices in the bid included more than two decimal places. Review expert, Visar Basha, recommended the rejection of the complaint, as Article 18.3 of the Guidelines states that the offer is non-responsive if there are more than two decimal places. The panel, relying on the expert’s recommendation, rejected the complaint and confiscated the complaint fee⁴⁵.

Commando v. Komuna e Prizrenit, 98/19

EO Commando was declared non-responsive in the tender for physical security of the premises, with one of the reasons being it changed the list of employees following the request for clarification from the CA. However, one of its claims was that the recommended EO, Rosa Security, had listed the price per hour with more than two decimal places. Review expert, Hasim Krasniqi, related to this claim, quoted Article 20.1 of the Tender Dossier in the general information section. According to this article, any number given after the second number after the decimal point will not be counted in the calculation. In its reasoning, the panel cited Article



5.3 of the Tender Data Sheet (TDS) for this point⁴⁶. According to the panel, this Article contained the following requirement:

“All prices specified in the tender must be stated in Euro (€) and must include all applicable taxes, duties and other charges. The bid price is allowed to be marked with a maximum of two (2) decimal places. Any number after the second number (2) shall not be taken into account while calculating the bid value.”



Article 5.3 of the TDS⁴⁷ contains the following below, rather than what the panel provided in the reasoning of the decision.

“Terms of Delivery: DDP (delivered duties paid)”

The panel only confirmed that Rosa Security’s price was with three decimal places, without giving any justification as to whether or not Commandos’ claim was founded. The panel decided to approve the CA’s decision for contract award⁴⁸. The decision was right, as the complainant EO was non-responsive, as it had changed the list of employees. However, related to the complaint line regarding the decimal places, the panel should have considered Article 18.3 of the Guidelines. As stated below, the PRB, in another decision on the same claim, rejected the complaint.

Construction Group v. Ministry of Internal Affairs, 526/18

The Ministry of Internal Affairs (MIA) had eliminated Construction Group company on the grounds that the bid prices included three decimal places, based on Article 18.3 of the Guide-

lines. Precisely on this item, Construction Group complained to the PRB, claiming that Article 20.1 of the Tender Dossier allows more than three decimal places, as only the first two are taken into account for calculation. Review expert, Visar Bibaj, recommended the rejection of the complaint, on the grounds that the price offered by the complainant EO was in breach of Article 18.3 of the Guidelines. The opinion was shared by the panel, which upheld the contract award decision⁴⁹.

PRB, should decide on claims regarding decimal places in line with article 18.3 of the Guidelines, as it prevails, over the general information of the Tender Dossier. Although the panel decided generally fairly in decision 98/19, the reasoning is inconsistent with the other two decisions mentioned above. The reference of the panel to Article 5.3 of the TDS is concerning, the text of which in the Tender Dossier was completely different. This greatly reduces the credibility of the PRB decisions.

Decisions on the statement on technical specifications



The standard Tender Dossiers approved by the PPRC, paragraph 3 of the TDS states:

“Statement of technical specifications for the goods offered, matching those mentioned in Annex 1 of the Tender Dossier”

This requirement implies that the bidder must sign a statement confirming that the technical specifications for the product offered are in accordance with those requested in the Tender Dossier. Since this request is in every file, the panel has stated in some decisions that the request is only a “template” and should be stated explicitly. However, what is meant by “explicitly” was never explained by the panel. As long as it is a requirement in the Tender Dossier and the bidder, upon submission of the tender, accepts all the terms

46 The Tender Data Sheet is part of the tender dossier, where the contracting authority notes information and requirements for economic operators.

47 Tender Dossier “Physical security of Prizren Municipality premises”. E-procurement. <http://bit.ly/2XlMmJS>

48 PRB. Decision 98/19. 2019 <http://oshp.rks-gov.net/repository/docs/vendimet/2019/97-98-19vend.pdf>

49 PRB. Decision 526/18. 2018 <https://oshp.rks-gov.net/repository/docs/vendimet/2018/526-18vend.pdf>

of the tender, item 3.1 of the TDS is a requirement that must be met. However, in a number of other decisions, the panel has decided differently.

Virtuo v. Kosovo Police, 39/18.

For the tender “Supply with Software - Backup Licenses” PRB issued four decisions on Virtuo’s complaints. In all, the tender was returned for reevaluation. In four evaluations, the CA eliminated Virtuo on grounds of software licenses, but for the fifth, it found that Virtuo failed to submit a statement on technical specifications. The only claim of Virtuo was precisely the elimination of the lack of this statement. Technical expert, Zenel Hisenaj, recommended that the complaint be upheld, and tender returned for reevaluation. His reasoning was that the request for technical specification statement is a “template” in the Tender Dossier. To strengthen his reasoning, the expert stated that the requirements of the CA in the Tender Dossier were listed in bold, while Article 3.1 of the TDS was not in bold.

In the reasoning of the decision, the panel relied on the words of the technical expert, that the request was a template of each Tender Dossier and that the CA had made the requirements in bold. The decision was again to return for reevaluation⁵⁰.

Sinjal v. Komuna e Lipjanit, 730/18

In another decision, the PRB decided differently on complaints regarding Article 3.1 of the TDS. In the tender “Supply and installation of signaling equipment in the city of Lipjan/Lipljan” PRB issued four decisions. In two decisions on the statement on technical specifications, the panel gave contradictory reasoning. Firstly, in decision 458/18⁵¹, with complainant Eing Com, the panel reasoned that the request for a technical specification statement was not part of the Tender Dossier. Although according to the panel the statement is contained in the TDS, it is not part of the Tender Dossier. It remains unclear, however, what is meant by the panel when a request exists in a document (the Tender

Dossier in this case) but has not been explicitly requested. Review expert, Qazim Hoxha, also recommended similarly with the decision of the panel, namely to reevaluate the tender.

Following reevaluation, Eing Com again filed a complaint, with one of the claims relating to the technical specification statement. The panel again reasoned that the statement was not a requirement in the tender dossier and the tender was returned again for reevaluation⁵². In this case, the review expert was Burim Guri who, similarly as Qazim Hoxha, stated that although the statement is included in the TDS, it is clear that it was not requested in the Tender Dossier.

After the third evaluation, CA chose Eing Com. A complaint was filed against this decision by Sinjal company, claiming that Eing Com does not have the technical specification statement. This time, the panel contradicted its previous reasoning on this claim.



The panel found that Eing Com lacked the statement⁵³:

“The first claim of the EO is that the EO proposed for contract award did not submit a statement on the technical specifications. The Review panel finds that this claim is well founded.”

This time, the PRB engaged two experts, review expert, Visar Bibaj, and technical expert Defrim Bojaj. The technical expert said that the recommended EO has the statement, but the expert confused it with the statements on the establishment of the consortium. Experts then recommended rejecting the complaint, and the panel decided to send it again for reevaluation.

After the fourth evaluation, Sinjali filed another complaint, while the recommended EO was Eing Com. The experts were the same as in the third decision. This time, experts pointed

50 PRB. Decision 39/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2018/39-18vendim.pdf>

51 PRB. Decision 458/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2018/458-18vend.pdf>

52 PRB. Decision 589/18. 2018
<https://oshp.rks-gov.net/repository/docs/vendimet/2018/589-18vend.pdf>

53 PRB. Decision 94/19. 2019
<http://oshp.rks-gov.net/repository/docs/vendimet/2019/94-19vendim.pdf>

out that the statement on the technical specification was found in the Eing Com bid, but after the panel, in decision 730/18, had stated that the statement was not submitted, the experts recommended cancelling the tender, as there were no responsive bids. The panel decided to confirm the contract award, after the statement was found in the tender offer of the recommended EO⁵⁴.

The reasoning of the panel in two decisions is contradictory. To ensure consistency, the panel must decide whether the technical specification statement is just a template or it is a part of the requirements of the Tender Dossier. Furthermore, the panel's reasoning that the requirements of the CA are found in bold, may lead to more risky situations and new complaints. In most Tender Dossiers, the CAs distinguish the requirements in other color or in bold. However, there are also some requirements that are standard parts of the Tender Dossier such as Article 3.1 relating to the statement on technical specifications, Article 5.3 on the terms of delivery, Article 11.1 on consortium statements, etc. If the reasoning of the panel is taken that the requirement in Article 3.1 is only a template, it should also apply to Article 11.1, as it is part of the standard files approved by the PPRC. There is a reason why the technical specification statement is required in the Tender Dossiers for works and supplies, and not in tenders for services, as service tenders do not have technical specifications of products.

Inconsistent decisions for the same tenders

In some tenders, the PRB continuously receives complaints, so much so that there are cases where a tender languishes for over two years in appeals and reevaluations. Due to the inconsistencies, there are cases when the panel, for the same complaint for the same tender, decided differently for one complainant and differently for another. Therefore, in cases where the demand is not quantifiable, it is best to annul the tender and correct the errors. PRB has also breached its own ordinances, first ordering a reevaluation, and in the next complaint for the same tender confirming the cancellation of the tender by the CA. The consequences of the inconsistencies are time lost which then causes further complica-

tions, both in terms of budget as well in the loss of interest by the CA to continue with the activity. A decision of the panel in the first complaint, as a result of the panel's interpretations, may delay the second complaint for additional months.

Decisions on the tender "Supply with cytostatics from Essential List lot 6,14"

MOH published a tender for the supply of cytostatic drugs from the Essential List of Medicines, on July 17, 2017. Lots 6 (Cistplatin) and 14 (Fluouracil) in the tender were cancelled by MOH because the bid of EO Liri Med exceeded the budget envisaged for the two lots. In the Tender Dossier, CA provided the estimated value for each lot. Liri Med filed a complaint against the decision to annul the tender. The review expert, Xhevdet Bushi, although recognizing that the bid for Lot 6 exceeded the budget by 11.5% and for Lot 14 by 267%, stated that since MOH did not contract all lots, there were still funds available. He further added that since this was a framework contract for 24 months, the budget could be increased in the following year and recommended that the tender be re-evaluated.

Another reasoning of the expert was that after the request for reconsideration, MOH had qualified Liri Med's bid as responsive but annulled the tender as it was over the budget. The CA corrected its mistake in this case, because if an offer exceeds the budget, it cannot be qualified as non-responsive, but is qualified as unsuccessful. Furthermore, the expert added that Liri Med submitted invoices of a number of pharmacies, claiming that the price offered was lower than the market price. This was accepted by MOH in the hearing session, adding that the Chief Administrative Officer (CAO), in this case the MOH Secretary, instructed them to stay within the planned budget. Any increase in the budget over the projected value should be approved by the CAO. In this case it was not approved.

The expert's interpretation of budget overrun was incorrect, as it is the prerogative of the CA to accept or not an offer that exceeds the budget, as provided in Article 62 of the PPL. A CA can also err in budgeting, planning a lower price of a product than the market value, but this in no way implies that the CA should increase the budget if an EO's bid is above the projected value. Another erroneous interpretation is the

⁵⁴ PRB. Decision 94/19. 2019
<http://oshp.rks-gov.net/repository/docs/vendimet/2019/94-19vendim.pdf>

one on the lots and the framework contract. The allocation of the projected value for each lot means that intended funds for a lot cannot be used for another lot. The expert's view that the product can be paid by the funds from other lots and in other years is incorrect because the CA places the projected value for purchasing of products at a certain price, which is the maximum it wishes to pay.



For a simpler illustration, let's take an example:

A CA wants to buy five packages of aspirin with a projected value of 10 Euro. This means that the maximum amount that the CA can pay for a package is two Euro. If an EO submits a higher offer, e.g. 15 Euro, it means that the EO is offering aspirin packages for three Euros each. According to the expert and the panel, as it is a framework contract, the CA can add funds from the next year's budget. However, the problem here is that the CA wants to purchase five packages of aspirin for 10 Euros, not 15.

During the hearing session, Panel Chairman, Blerim Dina, asked the EO if they were willing to conclude a contract with projected funds of the CA. However, this question was not addressed also to the representatives of the CA. Liri Med agreed to conclude a contract with the funds available. The Panel decided to return the tender for reevaluation with the reasoning that the CA projected an unrealistic market value⁵⁵. Furthermore, the Panel added that given that the EO agreed to sign a contract for the available funds, the CA was obliged to countersign it. The Panel also took into account the importance of such medical products and the health of citizens, in order to ensure that they are not left without supplies for an extensive time period. Out of 1,200 decisions that D+ analyzed since January 1, 2017, this is the only decision where the PRB obliged a CA to sign a contract.

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After reevaluation, the CA again canceled the tender on the same grounds of budget overrun, causing Liri Med to file another complaint. The panel, in addition to approving the appeal, this time also ordered the CA to enforce the previous decision⁵⁶. The panel qualified this an adjudicated matter, quoting the reasoning from the previous decision. The same was confirmed by review expert, Xhevdet Bushi, who recommended the reevaluation of the tender again.

After the panel returned the tender for reevaluation for a second time, during the reevaluation period, CA announced another tender for the supply of cytostatics from the Essential Medicines List, including Cistplatin. While this product

⁵⁵ PRB. Decision 24/18. 2018. <https://oshp.rks-gov.net/repository/docs/vendimet/2018/24-18vendim.pdf>

⁵⁶ PRB. Decision 243/18. 2018. <https://oshp.rks-gov.net/repository/docs/vendimet/2018/243-18urdherese.pdf>

was initially in lot 6, in the second tender the CA placed it in lot 11. This was noted by Liri Med who filed a complaint to the PRB against the contract notice. Its complaint related to a violation of Article 7 of the PPL, which provides for Equality in treatment/Non-discrimination. The review expert, Basri Fazliu, recommended that the complaint be approved and the tender cancelled, as the tender for this product was still open in PRB with a decision yet to be taken (the expert referred to the complaint 243/18). In his recommendation, the expert did not quote any articles of the PPL or the Guidelines which prevented a CA from initiating new tender procedures if the first tender was still open in PRB. During the hearing session, the CA declared that the first tender was cancelled as it was over the budget and they announced a new tender because of the urgency for the supply of Cistplatin, which was lacking since February 6, 2017.

The panel decided that the tender should be cancelled, as Cistplatin was included in the first tender, and the PRB issued an order for non-enforcement of decision 24/18⁵⁷. In its Decision, the panel found that two procurement procedures cannot be conducted for the same supplies. The problem with this finding is that neither the PPL nor the Guidelines prevent a CA from conducting two procurement procedures for the same products at the same time.

Following the ordinance 243/18, the CA again cancelled the tender, with the same reasoning: budget overrun. Again, expert Xhevdet Bushi recommended a reevaluation. Now, the expert rightly stated that the CA failed to comply with the two prior decisions, the first of which obliged the CA to sign the contract for the available funds.

Contrary to the first decision and ordinance, the panel decided to annul the tender⁵⁸. As basis the panel used the reasoning of MOH given in all three sessions, that Liri Med offer for lot 6 exceeded the budget by 11.5% and for lot 14 by 270%. The panel stated that the annulment was made under Article 62 which provides that the CA may annul the tender if it exceeds the budget. The panel also noted that the CA conducted market research in the region and confirmed that Liri Med's prices were higher than those in the region. Firstly, this research did not establish they were higher than the market

prices in Kosovo and, secondly, it did not find they were higher than the projected value. The decision also stated that the panel took into account the public interest, that it tried not to damage the budget, while it stated in ordinance 243/18 that public health was a public interest.

In order not to waste time, which for this tender meant around seven months, the PRB could have confirmed the annulment of the tender with the first decision, citing prices over the budget.

57 PRB. Decision 287/18. 2018.

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/287-18vend.pdf>

58 PRB. Decision 479/18. 2018.

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/479-18vendim.pdf>

DECISIONS RELATED TO THE BLACKLIST

When it has doubts that an EO has submitted false data or has forged a document, the CA makes a request to the PRB to disqualify the EO from participating in procurement activities for a specified period. Disqualification decisions are categorized by PRB as blacklist decisions. An EO can be blacklisted for a maximum of 12 months, according to Article 99.2 of the PPL.

Between June 2018 - May 2019, the PRB took 20 blacklist decisions. Apart from one blacklisting request that was approved, others were rejected. As of 1 January 2017, the PRB took 41 blacklist decisions, with only seven of them being approved.

However, despite these decisions of the PRB, the blacklist has not had any impact, as one of the disqualified EOs, Pastor Kosova, applied and was awarded a tender even after being previously disqualified. With the decision 1135/17, dated 14 March 2018, PRB disqualified EO Pastor Kosova for six months after it forged an authorization⁵⁹. According to the decision, Pastor Kosova would not be eligible to participate in procurement activities for the next six months. However, the company in question had bid and was awarded a contract in a tender announced after March 14, 2018. The Basic Court in Gjakovë/Đakovica published the notice on the decision of the CA on June 1, 2018, awarding the contract to Pastor Kosova, with a value of 1,054.92 Euro⁶⁰.

One year later, in March 2019, PRB approved the request of the Municipality of Prishtina/Priština to blacklist Viva Print Company. This company had forged TAK's certificate stating

it had no debt. During the hearing, the panel verified, through the TAK website, that the company was in debt. For this fraud, the panel decided to disqualify Viva Print for the period from April 10 to October 10, 2019⁶¹.

As in the case of Pastor Kosova, the disqualification did not prevent Viva Print from being awarded a tender, even after being disqualified from participating in public tenders. Viva Print signed a contract with the Municipality of Prizren for the tender "Auditing, Inspection and Reorganization Analysis of Roads in the City of Prizren" for 117,500 Euro, precisely on the day the disqualification entered into force on April 10, 2019⁶².

This is a weakness in the procurement system, failing to take measures to prevent such operators from bidding, by suspending them from the e-Procurement platform. This is easily done as now all bids have to be submitted electronically.

In all 19 requests for disqualification rejected by the PRB, the panel's reasoning was virtually the same: "The CA has no evidence that the EO submitted false evidence or forged documents, as per Article 99.2 of the PPL". The interpretation as to what the panel considers false evidence or forgery is also the basis for the rejection of these requests.

One request for disqualification was that of the Central Procurement Agency (CPA) against the EO Commando. The CPA had declared the EO Commando the winner, and prior to the publication of the contract award notice it had requested Commando to provide, among others, a tax clearance certifi-

59 PRB. Decision 1135/17. 2018.

<https://oshp.rks-gov.net/repository/docs/1135-17vend.pdf>

60 Basic Court of Gjakova/Đakovica. Notification for the decision of the CA. 2018.

https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=159145

61 PRB. Decision 178/19. 2019

<https://oshp.rks-gov.net/repository/docs/178-19lz.pdf>

62 Contract 622-19-003-221 between Intrast & Viva Print and Prizren municipality. E-procurement.

<http://bit.ly/2KvMJy2>

icate from TAK. The CPA had waited for several days, while Commando stated, at the end of deadline that it had debts owed to TAK. The panel took a decision to reject the request with the reasoning that Commando had not provided false evidences or forged documents⁶³.



When preparing its bid, the EO must sign the statement under oath, included in the Tender Dossier, which states:

"I hereby confirm that I have read the eligibility requirements pursuant to Article 65 of the PPL, respectively paragraph 6 of the Information on Bidders, and confirm that I meet the eligibility requirements for participation in this procurement procedure."

Article 65.4.8 of the PPL specifies the tax clearance certificate from TAK, and, as stated above, prevents an EO with debts owed to TAK from bidding. Since the tax clearance is requested for the last quarter prior to publication of the contract award notice, EO Commando could not have incurred the debt to TAK during the period between the announcement of the tender and the selection of the winner, as this tender procedure had lasted for about one month. Thus, EO Commando knew it had debts to TAK, yet it stated in the declaration under oath that it met the eligibility requirements under Article 65, which, can be interpreted as having filed false data. Moreover, the signing of the declaration under oath places additional responsibility on the EO. According to this interpretation, EO Commando should have been disqualified.

If there was a mechanism of information sharing between TAK and PPRC, Commando would not have been allowed to bid, as Article 65.4.8 provides an EO is not allowed to bid if it has tax arrears.

Another decision related to TAK clearance is the decision on the request of the Ministry for Kosovo Security Force (MKSF) to blacklist company Astraplan. This request was rejected by the PRB using the same reasoning, that MKSF has no evidence that Astraplan submitted false data or forged documents⁶⁴. The CA had selected as winner EO Astraplan, although the latter had failed to submit a tax clearance, firstly with the justification that they were out of Kosovo, then claiming that when they logged into the TAK system to obtain the clearance, they were surprised it showed they had unpaid taxes. The strange statement of the expert was that the CA can take other measures against Astraplan. The only measure was the confiscation of tender security. The panel could have used the interpretation that the EO had failed to offer in accordance with the conditions it accepted in the declaration under oath.

Another PRB decision rejecting the request for disqualification is that of the Municipality of Vushtrri/Vučitrn against EO Commando. The municipality had requested disqualification because EO Commando, which had won the contract, had not paid the 5% pension contributions for a number of employees, as envisaged by the Labor Law. This finding of the Municipality was supported by expert Basri Fazliu. In the Tender Dossier, the municipality had explicitly stated that taxes and pension contributions of the employee and employer should be added to the net wages. The panel, using the same reasoning as in the CPA's request, decided to reject the request for disqualification⁶⁵. The panel further added that in case of a disagreement regarding the implementation of the contract, the CA must resolve it following the Law on Obligations⁶⁶.

63 PRB. Decision 723/18. 2018.

<https://oshp.rks-gov.net/repository/docs/723-18lz.PDF>

64 PRB. Decision 737/18. 2018

<https://oshp.rks-gov.net/repository/docs/737-18lz.PDF>

65 PRB. Decision 1078/18. 2018.

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/1078-18%20end%20disk.pdf>

66 Law No. 04/L-077 on Obligational Relations. Official Gazette of the Republic of Kosovo. 2012.

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2828>

On this issue, the panel could have interpreted the Tender Submission Form which provides as follows:



2. WE AGREE TO SUBMIT AN OFFER IN ACCORDANCE WITH THE TERMS OF THE TENDER DOSSIER AND THE CONDITIONS LAID DOWN, WITHOUT RESERVE OR RESTRICTION:

According to this Article, when submitting the tender, EO Commando agreed to the terms of the Tender Dossier, one of the conditions of which was payment of employer's pension contributions. The panel could have disqualified the EO, which would be an administrative decision, while the municipality could forfeit the performance security and send the case to the court for violation of the Law on Kosovo Pension Funds⁶⁷.

In another case, the municipality of Kaçanik/Kaçanik requested that Blendi Company be disqualified as the laptops delivered did not comply with the specifications required in the Tender Dossier. PRB also rejected this request with the same reasoning that the "EO did not submit false data or forgery"⁶⁸. Again, in this case, the panel could rely on Article 2 of the Tender Submission Form, as noted above. The municipality had requested to purchase 140 laptops, which, among other, have Intel Core i3 7020U processors. The acceptance committee found that Blendi had delivered laptops with Intel Celeron N3350 processors. From Intel's official website, the recommended prices for these two processors are \$ 281 and \$ 107⁶⁹. Therefore, for the processor alone, the price difference is \$ 174, or about 155 euros, while for 140 laptops the difference is 21,700 euros. Without prejudice to other parts of the laptop that may have been changed, Blendi attempted to defraud the municipality for at least 21,700 euros. The Acceptance Committee noted in the minutes that

even Blend's representative agreed with the finding that the laptops were not as requested. The municipality had confiscated the performance security of 10% of the contract value, which in this case was EUR 5,042.

In its reasoning, the panel stated that the CA had no evidence that the EO misled or forged any document or evidence. However, the CA in this case did provide evidence, the minutes of the goods hand-over process, consisting of a committee of three members, and that the EO had also agreed with the findings of the committee.

The panel's interpretation of Article 99.2 makes it very difficult to disqualify companies, especially those that defraud the government. Without categorizing fraud by importance, there is a major difference between falsifying a tax clearance certificate and frauds in goods, looking at it from a cash cost perspective. The Kaçanik/Kaçanik municipality tender shows that the value of potential fraud is far greater than the tender security which was confiscated. In this case, the CA noticed the fraud that could be done, but as D+ found in past reports, others may not even notice it⁷⁰.

67 Law No. 04/L-101 on Kosovo Pension Funds. Official Gazette of the Republic of Kosovo. 2012. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2815>

68 PRB. Decision 163/19. 2019 <https://oshp.rks-gov.net/repository/docs/163-19vendim-lz.pdf>

69 Intel Core i3 7020U and Intel Celeron N3350 <https://ark.intel.com/content/www/us/en/ark/compare.html?productIds=95598,122590>

70 Democracy Plus. Towards municipalities with open, accountable, and efficient public procurement, pg. 62. 2018 <http://www.dplus-ks.org/wp-content/uploads/2018/12/2018-12-03-Drejt-komunave-me-prokurim-t%C3%AB-hapur-llogaridh%C3%ABn%C3%ABs-dhe-efikas-ALB-Final.pdf>

DECISIONS TO (NOT) FINE THE CA

PRB may impose fines against CAs when they fail to comply with the decisions of the panel or ordinances or when there is a continuous violation by the CA. The fine, under Article 131 of the PPL, shall not be less than 5,000 euro. PRB fined a number of CAs that, in the view of D+, should not have been fined, and failed to fine others that should have been fined. The following are two cases where the PRB should have decided differently from the decisions it made.

Fine against Trepça/Trepča

TTrepça/Trepča had published the tender “Supply of spare parts for Wagner ST2D loaders” in early 2018. By the time of selection of the winner, there were four complaints at the PRB. As a result, the contract was signed only at the end of 2018. PRB returned the tender for reevaluation three times, while confirming the contract award the fourth time. Four companies bid for the tender, and after each reevaluation Trepça/Trepča chose a different winner, while the contract was eventually awarded to Profitech.

As a result of complaints at the PRB, Trepça/Trepča was left without spare parts for a very important machine. After the fourth complaint, filed by Segment Kosova, Trepça/Trepča announced another tender with the same title. The procedure used was a negotiated procedure without publication of a contract notice. The winner of the tender was company SNR, and the contract value was 17,684.14 Euros. Profitech appealed this decision to the PRB, but as it was a negotiated procedure, Trepça/Trepča did not suspend the tender but rather signed the contract without waiting for the legal deadline for complaints, which is permitted by Article 26.4.1 of the PPL. The contract was signed on November 13, 2018,

and its implementation would take place within 30 days. Since the tender was not suspended, the panel issued a fine in the amount of 5,000 Euros against Trepça/Trepča, and also confirmed the contract award, given the public interest, and also because the contract was implemented in full⁷¹. Another reasoning of the panel was that the CA entered into the contract and made the supply although there was a complaint at the PRB. This reasoning implies that a CA has no right to announce another tender if there is a complaint to the PRB for the same supply. This reasoning can probably be used for tenders for works and services that are performed only once, so they cannot be repeated – for instance the same road cannot be paved twice, thus there cannot be two tenders. For supplies, as is the case with this tender, two or more tenders may be announced, even if there is a complaint at the PRB. The reason is that supplies occur continuously, so there may be two tenders for spare parts, or for supply with hygienic materials. Supplies can be stored in CA warehouses until needed. The PPL and the Guidelines include no provision prohibiting the announcement of another tender if the former is being reviewed by the PRB.

The experts in this tender, reviewer Ilir Halili and technician Zivce Sarkocevic, recommended that the tender be returned for reevaluation. However, this recommendation was not logical as the contract was signed on November 13, 2018, while the experts made their recommendation on December 12, 2018, 30 days after the contract was signed, which was the deadline for the contract to expire. Thus, the tender for which the contract had just been terminated, could not be reevaluated.

The panel’s reasoning that the fine was imposed due to non-suspension of the tender could be convincing if it had decided similarly in other earlier cases. The Municipality of

⁷¹ PRB. Decision 680/18. 2019
<https://oshp.rks-gov.net/repository/docs/vendimet/2019/680-18vend.pdf>

Pristina/Priština used the same procedure for the tender for physical security, without publishing a contract notice. The Municipality, like Trepça/Trepča, did not suspend the tender, but it signed a contract with K.S.A.S Security. In this case, the panel confirmed the contract award but did not impose a fine against the Municipality⁷². The panel used precisely Article 26.4.1 of the PPL to justify the action of the Municipality, which it did not do in the Trepça/Trepča decision. This article says:



4.1. AT LEAST TEN (10) DAYS HAVE PASSED SINCE THE DATE OF PUBLICATION OF THE CONCERNED CONTRACT AWARD NOTICE; PROVIDED, HOWEVER, THAT THIS CONDITION SHALL NOT APPLY TO AN EMERGENCY PROCUREMENT CONDUCTED PURSUANT TO ARTICLE 35.2.1(III); OR TO PROCUREMENT ACTIVITY CONDUCTED PURSUANT TO ARTICLE 36. OR MINIMAL VALUE CONTRACTS.

No fine against the Ministry of Infrastructure

In the tender “Repair of the tunnel on the national road N2, segment Mitrovice-Caber” of the Ministry of Infrastructure (MI), K-Ing & Ekskavatori consortium filed three complaints to the PRB. Differently from Trepça/Trepča, this tender used an open procedure. In the first⁷³ and second⁷⁴ decisions, the panel returned the tender for reevaluation, approving the claims of K-Ing & Ekskavatori against the recommended EO for contract award, Shkoza F07 & Dijamanti.

Following the reevaluation, MI selected Alko Impex as the winner, which had not filed a complaint. Moreover, this company was declared non-responsive in the past two evaluations. MI signed a contract with Alko Impex by misinterpreting the deadline for complaints and by not suspending the activity. By the third PRB decision, about 40% of the works had been completed. The panel took note of the public interest in the case and decided to confirm the decision on awarding the contract⁷⁵.

As a result of the breaches committed by the CA for this tender, including miscalculation of the time limit for the request for reconsideration and non-suspension of the tender, the panel should have fined the MI for violating the PPL. As a basis for the fine, the panel could also rely on an earlier decision where the MI’s procurement manager was given a final warning⁷⁶.

⁷² PRB. Decision 220/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/220-18vend.pdf>

⁷³ PRB. Decision 208/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/208-18vendim.pdf>

⁷⁴ PRB. Decision 380/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/380-18vendim.pdf>

⁷⁵ PRB. Decision 571/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/571-18vend.pdf>

⁷⁶ PRB. Decision 131-132-138-140-143-148/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/131-132-138-140-143-148-18-vend.pdf>

EXPERTS' RECOMMENDATIONS

PRB experts are selected by the panel to provide expertise regarding the complaints of EOs. There are two categories of experts: review experts who review claims related to procurement procedures, PPL and the Guidelines, and technical experts who have deeper knowledge of a particular field. Their selection is based on their education and knowledge in a particular field. Experts' recommendations are very important as the panel, in the absence of professional knowledge in many areas, must decide based on their recommendations.

In many cases where the panel's decision complies with the expert's recommendation, the reasoning of the decision is literally the same as the expert's recommendation. This increases the influence of the expert on the panel, and since there are different experts, it increases inconsistency between decisions on same matters, but with different experts. The following are the decisions where the experts made, in our view, the wrong recommendations.

SNR v. Trepça/Trepča, 278/18

EO SNR filed a complaint to the PRB against the decision of the CA Trepça/Trepča regarding the contract award, claiming that SNR was eliminated after submitting an expired ISO 18001 certificate. Expert Basri Fazliu stated that an EO cannot be eliminated on the basis of a request that was not included in the Tender Dossier. The request for ISO 18001 certificate was added to the error correction notice, which the expert apparently had failed to notice. His recommendation was to send the tender for reevaluation. Repeating the expert's reasoning, the panel took a decision to return the tender for reevaluation, and the complaint was upheld⁷⁷. Had the review expert noticed that the ISO 18001 certificate was required in the Tender Dossier, his recommendation should

have been to confirm the decision of the CA. With this recommendation, the panel could have also made a decision to confirm the decision of the CA.

Sigma v. Ministry of the Kosovo Security Force, 396/18

EO Sigma filed a complaint to the PRB against the decision of MKSF for contract award. Sigma's claim was that the winning EO had not provided a reinsurance certificate in the Tender Dossier. The Tender Dossier required that EOs must be reinsured in larger companies with an A+ rating, according to Standard & Poor's rating. The winning EO had provided a document stating that Butcher Robinson & Staples International Limited will consider offering reinsurance coverage up to 100%. The expert stated that the term used in this instance implies an optional coverage of reinsurance up to 100%. Expert Hysni Muhadri considered that this document fulfilled the request of the CA. However, the CA had requested reinsurance, rather than a document stating a company will consider reinsurance. On the other hand, the complaining EO in the case had submitted the document as required by the Tender Dossier. The expert, with this erroneous interpretation, recommended rejection of the complaint.

In its reasoning, the panel took into account that the document of the winning EO read "can be insured", while the complaining EO stated it was "reinsured". The decision also had the word "can" in bold, to indicate that the difference is in this word. The panel decided to uphold the complaint and return the tender for reevaluation⁷⁸.

⁷⁷ PRB. Decision 278/18. 2018.

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/278-18vend.pdf>

⁷⁸ PRB. Decision 396/18. 2018.

https://oshp.rks-gov.net/repository/docs/vendimet/2018/396-18vendim_1.PDF

Doni Term – Klimaterm & Ekoterm v. KEK, 71-75/19

EO Doni Term and Klimaterm & Ekoterm had contested the references for similar work of the winning company H&B Consulting. The CA's request in the Tender Dossier was that the bidder must submit at least one reference or technical acceptance of similar completed projects. The tender title was "Functionalization of the existing facility of the new canteen for workers in PP-A, mechanical part - heating and ventilation". The title thus required references to similar projects for heating and ventilation. The complainants claimed that H&B Consulting's references were for construction and renovation of premises rather than for heating and ventilation. Review expert, Muhamet Kurtishaj, recommended the rejection of complaints. His reasoning was that the four references of H&B Consulting correspond to code 45331000-6 of the Common Procurement Vocabulary (CPV)⁷⁹, which was also the code of the tender in the complaint. However, H&B Consulting's four references did not have this code. The Tender Dossiers published on the PPRC website for these references had the CPV Code 45000000-7⁸⁰18283 which is the code for construction works, while code 45331000-6 is for installation works of heating, ventilation and air conditioning. The panel upheld the award decision, while the reasoning was textually the same with that of the expert. The panel did not verify the references at all, although during the hearing, the complainants claimed that the winning EO had no references of similar works. In this case, the panel was misled by the review expert with respect to the CPV code.

International Security Association v. MA Obiliq/Obilić, 106/19

For the tender "Physical security of the municipal building", International Security Association complained to the PRB with the claim that recommended EO, Rosa Security, cannot cover the wage expenses of employees with the offered prices. Expert Shefkinaze Vllasaliu, relying on the online form⁸⁴ for the calculation of gross/net salary on the Kosovo Tax Administration (TAK) website, reached the conclusion

that Rosa Security's offer is higher than the wage expenses. Her recommendation was to reject the complaint. However, what the expert did not calculate was the employer's contribution, which is 5% of the gross salary. The calculator calculates this but does not include it in the total, as the calculator serves natural persons to view elements of gross salary (net salary + income tax + employee pension contribution). When the employers pension contribution is also added to the employees gross wage, the offer of Rosa Security comes out lower than expenses, which implies that the EO cannot pay its employees with this offer as per the Labor Law.

Relying on the words of the complaining EO, the panel returned the tender for reevaluation, requesting the CA to certify through TAK whether a 10% pension contribution should be added to the net salary (5% by the employer and 5% by the employee)⁸⁵.

Inconsistent expert recommendations

In addition to inconsistent panel decisions, there are conflicting expert recommendations on specific issues. Since the panel makes more than 500 decisions a year on average, and experts have about 50 cases per year, it is easier for experts to be consistent in their recommendations. However, according to the cases presented below, experts do not always make the same recommendation for the same claim.

Muhamet Kurtishaj

Review expert Muhamet Kurtishaj made conflicting recommendations in two decisions on the abnormally low prices claim. In complaint 43/18 of the company Graniti Com against the decision of the Municipality of Skenderaj/Srbica for contract award, one of the claims was that the offer of the recommended EO was with abnormally low prices. The expert calculated the abnormally low tender according to the formula in form B57 and found that the conditions for

⁷⁹ The CPV defines the procurement activities in numbers. For example, renovation has a specific number, wood supply another number, and so on.

⁸⁰ <https://bit.ly/2W4ancd>

⁸¹ <https://bit.ly/2JW6ui9>

⁸² <https://bit.ly/211CW03>

⁸³ <https://bit.ly/2wh3MMa>

⁸⁴ Wage calculator. Tax Administration of Kosovo
<http://www.atk-ks.org/kalkulatori-i-pagave-nga-neto-ne-bruto/>

⁸⁵ PRB. Decision 106/19. 2019

<http://oshp.rks-gov.net/repository/docs/vendimet/2019/106-19vend.pdf>

qualifying the bid of the recommended EO as abnormally low were not fulfilled. During the session, Graniti Com stated that the recommended EO had offered a price of one cent in 30 lines. Although the panel returned the tender for reevaluation, the panel reasoned that there were no conditions to qualify this bid as abnormally low⁸⁶.

In the case of company Europa on a tender for servicing and maintenance of vehicles, the expert gave a different recommendation. Europa had only one claim: The recommended EO, D-Rahmani, had offered abnormally low prices, specifically D-Rahmani had 72 line items in the bill of quantities with a price of 10 cents. Also, according to the formula, his bid could be described as abnormally low. The expert recommended that the appeal should be rejected as it is the right of the CA to evaluate the price.



The expert stated Article 61.1 of the PPL which states:

“If an economic operator submits a tender that, considered objectively, is or appears to be abnormally low, the contracting authority shall send a written request to the tenderer asking for the tenderer to supply a written submission providing: (i) a detailed breakdown of the relevant constituent elements of the tender; and (ii) explanations, in accordance with paragraph 2 of this Article regarding the bases for its tender⁸⁷.”

As the CA had not qualified the bid of the recommended EO as abnormally low, no formula could be used, reasoned the expert.

These two recommendations of Muhamet Kurtishaj appear to be contradictory. In none of the tenders did the CA qualify the bids as abnormally low. The expert in the Graniti Com

complaint had calculated the tenders according to the formula, while in the Europa complaint it did not. According to the data in the PRB Decisions' Database, Muhamet Kurtishaj has been designated as the only expert in eight complaints since 2017, where one of the claims included abnormally low prices. Therefore, it was very easy for the expert to see how he recommended in the past on this matter. On abnormally low price claims, he should either examine the claim and make calculations according to the formula, or state that determining whether there is an abnormally low bid is a prerogative of the CA.

The panel returned the tender for reevaluation⁸⁸ and obliged the CA to analyze the prices offered by recommended EO.

Xhevdet Bushi

In two decisions on budget overruns per lot, review expert Xhevdet Bushi gave a contradictory recommendation. The Municipality of Prizren, in the tender for summer and winter maintenance, had eliminated EO Is Company on the grounds that it exceeded the estimated value for the lot. However, in the tender dossier the CA had not allocated the projected value per lot, but only the total budget was provided. Xhevdet Bushi rightly recommended that the appeal be approved on the grounds that no budget overrun could be qualified, as it was not known what the estimated value of each lot was. The panel had the same opinion, returning the tender for reevaluation⁸⁹.

In another 2018 recommendation, the expert recommended reevaluation of the tender even though Liri Med's bid for lots 6 and 14 exceeded the budget by 11.5% and 267%, respectively. The CA, in the Tender Dossier, had determined the estimated value for each lot, however the panel decided to reevaluate the tender.

It can be understood from the two recommendations that the expert recommends reevaluation for budget overruns, regardless of whether the budget was given per lot in the Tender Dossier or not.

86 PRB. Decision 43/18. 2018

<https://oshp.rks-gov.net/repository/docs/vendimet/2018/36-43-44-18vendim.pdf>

87 Article 61. Law on Public Procurement Official Gazette of the Republic of Kosovo. 2011.

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

88 PRB. Decision 63/19. 2019

<https://oshp.rks-gov.net/repository/docs/vendimet/2019/63-19vend.pdf>

89 PRB. Decision 108/19. 2019

<http://oshp.rks-gov.net/repository/docs/vendimet/2019/108-19%20vend.pdf>

RECOMMENDATIONS

Given the findings presented in this report, and the ongoing monitoring of the PRB, D+ proposes the following measures in order to improve the complaints mechanism in public procurement:

- PRB should take a position regarding the review of claims concerning violations of specific laws or secondary legislation. The requirements in the tender dossier touch on many areas that are regulated by other laws. The PRB must decide whether to consider or to disregard all other laws when deciding. While the PRB applies many other laws when making a decision (even when they are not required in the tender dossier to be respected), it should be taking into consideration all other laws;
- PRB should avoid the unnecessary reevaluation of tenders, whenever possible. The report presents cases where the PRB could have made the right decision when the first complaint was filed, but there is a tendency to return tenders for reevaluation. Avoiding unnecessary reevaluations can be achieved through increasing the capacities of the panel members and experts in areas where there is lack of the necessary technical knowledge. Additionally, the PRB should ensure that it hires qualified experts from relevant fields so that the need for reevaluation of tenders is avoided especially due to basic mistakes in mathematical calculations;
- PRB should not approve part of complaints only so that the complaint fee is not confiscated. The PRB should confiscate the fees more frequently, among others, the complaints from EO who were once declared irresponsible by the PRB but complain about the same tender again;
- PRB should set up an advanced database of its decisions, to facilitate searches of decisions on particular issues, and ensure consistency in decision-making. The PRB should always decide in the same manner for a particular issue. Although tenders have different characteristics, cases in excess of the estimated value or the certification that the EO has no debts to TAK, should always be decided in the same way. This would add to the importance of precedents in reviewing complaints;
- PRB should monitor and control experts to ensure quality and impartiality, particularly when claims against them and their performance arise. Since D+ has found two cases with major violations in the experts' recommendations, their recommendations should be audited. PRB should do this by contracting a third party;
- PRB should undertake performance quality check for each expert, tracking the success of their recommendations, deadlines for handling cases and other indicators, in order to determine whether they should be retained or replaced;
- PRB should take a stand on interpretations of the PPRC, as in some cases it considers them mandatory and not so in others. This would eliminate the risk of allegations against the PRB for taking into account the PPRC's interpretations selectively;
- PRB should change its interpretation on the disqualification of economic operators, as the current interpretation is very narrow and allows economic operators with false statements or who have attempted to defraud, to remain unpunished. PRB in this case should take into account the articles of the tender dossier, which EO accept when they submit the bid;

- Blacklisted operators must be suspended from the e-Procurement platform;
- PRB should pay greater attention to the enforcement of its decisions by establishing monitoring mechanisms for enforcement of decisions, and applying punitive measures against CAs that fail to comply with decisions or violate deadlines;
- PRB should impose fines against CAs with repeated violations of PRB decisions;
- PRB should hold open hearings about all complaints. This would avoid the possible public perception that PRB has something to hide in closed sessions;
- PRB should publish all decisions, complaints, expert reports and other important documents in an electronic and readable format.

