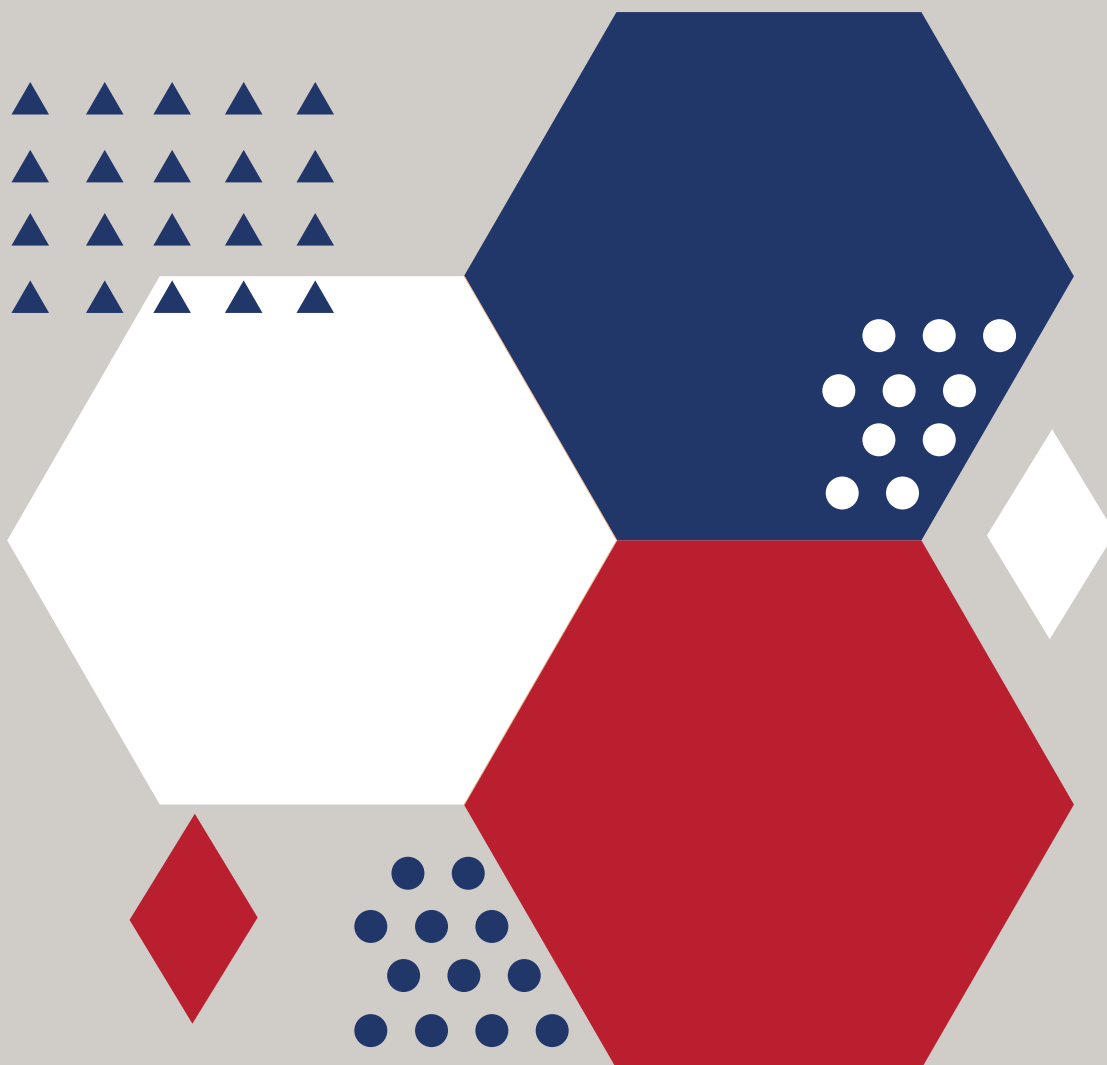




**USAID**  
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# Assessing the Procurement Review Body: A Six-Month Review and Recommendations (July - December 2023)





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USAID's Kosovo Municipal Integrity activity

**DISCLAIMER:** The author's views expressed in this report do not necessarily reflect the views of the United States Agency for International Development (USAID) or the United States Government.

# Abbreviations

<b>CA</b>	→ Contracting Authority
<b>CMS</b>	→ Case Management System
<b>D+</b>	→ Democracy Plus
<b>EO</b>	→ Economic Operator
<b>GEO</b>	→ Group of Economic Operators
<b>LPP</b>	→ Law on Public Procurement
<b>MESPI</b>	→ Ministry of Environment, Spatial Planning and Infrastructure
<b>MIA</b>	→ Ministry of Internal Affairs
<b>MoD</b>	→ Ministry of Defense
<b>MoH</b>	→ Ministry of Health
<b>PRB</b>	→ Procurement Review Body

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# Executive Summary

This monitoring report, developed by Democracy Plus (D+) through the USAID's Kosovo Municipal Integrity activity (KMI), evaluates the Procurement Review Body's (PRB) performance. The assessment is based on monitoring observations conducted throughout the six-month period from July to December 2023. The monitors diligently examined the decisions and practices of the PRB to gauge the impartiality of this mechanism in addressing complaints from various parties. The report highlights the progress made and various challenges in the performance of the PRB in the second half of 2023, such as:

- Delays in decision-making;
- Expert errors;
- Inconsistency in decision-making;
- Decisions lacking conclusive outcomes;
- Lack of transparency.

During the monitoring report, the PRB often failed to meet the legal deadlines set for decision-making on complaints by Economic Operators (EO). According to the Law on Public Procurement (LPP), the statutory decision-making timeframe is 34 days, with a provision for a 20-day extension in special cases.<sup>1</sup> Another issue identified in the second half of 2023 is the PRB's tendency to issue decisions without clear conclusions. This approach creates an opportunity for complainant operators to contest the decisions of CAs in competent courts.

During the review period, monitors observed a significant increase in the partial approval of complaints, a trend that had nearly been eliminated in the first six months of 2023<sup>2</sup>. Partial approval enables the PRB to fully refund appeal fees to EOs, even when the decision ultimately favors the CA. Taking into account the previous reports from civil society, monitors in this case also reported on transparency issues within the PRB. The report highlights an improvement in the transparency of this body, but with issues that need addressing, such as the publication of interim reports on their website, not all sessions being streamed online, lack of notification on the website about session schedules, some documents not being uploaded on accurate dates, and decisions being distributed in scanned formats that are difficult to read. These are among the key findings in this report.

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1 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 117, point 1, (last accessed on 31 December 2023)

2 PRB Monitoring Report from D+ (January - June 2023), ([https://dplus.org/wp-content/uploads/2023/09/18-09-23\\_Assessing-the-Procurement-Review-Body-A-Six-Month-Review-and-Recommendations.pdf](https://dplus.org/wp-content/uploads/2023/09/18-09-23_Assessing-the-Procurement-Review-Body-A-Six-Month-Review-and-Recommendations.pdf))

# Introduction

The Procurement Review Body (PRB) is an independent administrative body with the authority to review complaints in public procurement from suppliers, service providers, and/or contractors (known as EOs). Upon receiving a written complaint regarding a decision made by the CA, the PRB is mandated to review the claims within legally defined timelines to ensure a timely resolution. Following the review process, the PRB issues a written decision that addresses the complainant's claims and renders a decision on the procurement activity against which the complaint was filed. During the second half of 2023, similar to the initial six months, the PRB operated without a complete board due to the dismissal of a member in early July 2023 by the Kosovo Assembly<sup>3</sup>, at the request of the Government of Kosovo. The dismissal, citing a violation of the code of professional ethics in a procurement activity related to the supply of insulin, stirred controversy. The government did not provide a concrete justification for removing only one member, although two other board members were involved in the review panel responsible for reevaluating the insulin tender. Furthermore, no published documents or evaluations supported the claim that the dismissed member had breached professional ethics. This issue was escalated to the Constitutional Court to assess its legality and constitutionality. More than 150 days have passed without a decision from this body.

The efficiency of the board faced jeopardy as the remaining three members struggled to manage an increased workload, exacerbated by the transfer of 173 unresolved complaints from the first six months of 2023 to the second half. Additionally, there was a notable surge in the number of complaints during the latter half of 2023, totaling 623, marking an increase of 177 complaints compared to the first six months.

Adding to the complexities, in early August 2023, the PRB decided to amend Regulation no. 01/2020 on the work of the PRB. On 8 August 2023, the PRB modified Article 21<sup>4</sup>, of the Regulation, specifically addressing the establishment and composition of review panels based on contract values subject to complaint in the PRB. It was determined that complaints related to contracts valued up to EUR 300,000.00 should be reviewed by individual panels. However, this change lacked transparency, as there was no public discussion surrounding it.

Despite the aforementioned amendment, delays in the decision-making process persisted. Shortly after the assembly voted to appoint a new board member in October 2023, bringing the body back to four functional members, one of the members elected the previous year resigned in November 2023 due to personal reasons. This departure left the board with an incomplete composition.



During the second half of 2023 the PRB operated without a completed board



# 623

complaints within six months



The change in the Rules of Procedure of the PRB was accompanied by a lack of transparency

<sup>3</sup> Decision on dismissal of the member of the PRB Board ([https://kuvendikosoves.org/Uploads/Data/SessionFiles/2023\\_07\\_18\\_\(13\\_07\\_2023\)Vendim-pershkarkimineznj.KimeteGashingapozitaeanetaresseOrganitShayrtuesteProkurimit\\_6gwUfqvDpj.pdf](https://kuvendikosoves.org/Uploads/Data/SessionFiles/2023_07_18_(13_07_2023)Vendim-pershkarkimineznj.KimeteGashingapozitaeanetaresseOrganitShayrtuesteProkurimit_6gwUfqvDpj.pdf)), (last accessed on 31 December 2023)

<sup>4</sup> Regulation no. 01.2020 (<https://oshp.rks-gov.net/sq/Documents/Download?id=32d256d8-2a52-ee11-b5bc-005056ba09d5>), (last accessed 31 December 2023)

# Number and Nature of PRB Decisions in the Second Half of 2023

The number and the types of PRB's decisions in the first six months of 2023:

**579**  
decisions

**216**  
complaints still under process

PRB held  
**38**  
hearing sessions

D+ monitored the decision-making of the PRB from July 1 to December 31, 2023. During this period, the PRB issued 579 decisions, with 216 still in process. There was a total of 38 hearings with involved parties.

The categorization of decisions made during this reporting period is as follows:



**289**

decisions were in favor of the EOs who filed complaints.



**290**

decisions were against the complaining EOs.



in **85**

cases, PRB decisions did not align with expert recommendations.

Regarding the received complaints, the distribution is as follows:



**81**

complaints were related to the contract notice.



**115**

complaints were lodged against the cancellation notice of procurement activity.



**376**

complaints pertained to contract award notices.



Additionally,

**7**

other miscellaneous complaints.



# Duration of Decision Making and Consequences in Public Procurement

Delays caused by complaints can significantly impact capital investment projects, leading to substantial delays, and affecting projects of great value for months. Tenders with seasonal impact, such as those related to summer and winter road maintenance, are particularly vulnerable to negative effects on citizens. The suspension of these procurement activities can have detrimental impacts on public services and infrastructure, emphasizing the urgency of addressing and resolving complaints in a timely and efficient manner.


For example, the PRB was delayed by 172 days in making a decision regarding the tender for “Expansion of national road N25, Prishtinë/Priština – Besi/Besinja – Podujevë/Podujevo, Lot 0, 1, 2, 3, and Lot 5 structures,” initiated by MESPI. The case was submitted to the PRB on June 15, 2023, and the decision by the Review Panel was made on December 4, 2023. In fact, initially, three experts declined to accept the mandate for its preliminary review. Furthermore, during the process, the chairperson of the review panel was replaced due to resignation. Additionally, the panel requested an interpretation from the Public Procurement Regulatory Commission during the review of this case. These factors contributed to the prolonged duration required to reach a decision in this case.

Similarly, there was a delay of 133 days for the procurement activity ‘Horizontal, Vertical signaling and road equipment in the municipality of Gjilan/Gnjilane,’ initiated by the municipality of Gjilan/Gnjilane, with a designed value of EUR 340,000.00. The complaint was filed with the PRB on August 7, 2023, while the decision by the review panel was taken on December 18, 2023. The claimant alleged that the municipality made an incorrect assessment of their tender documentation and references to similar work. Also, for this case, the review panel underwent changes during the review process, as one of the members resigned from the position on the PRB board, while the engagement of another member until the decision on this case took time, as they needed to analyze the case from the beginning to make a merit-based decision.

In another case, it took the review panel over 100 days to make a decision on the procurement activity ‘Construction of the fecal and atmospheric sewerage network’ initiated by the Municipality of Podujevo with an anticipated value of EUR 3,061,853.52. The complaint was filed with the PRB on July 31, 2023, while the decision by the review panel was taken on December 21, 2023.

These delays in decision-making, also caused by the circumstances created during this period at the PRB, including the resignation or dismissal of members, have caused material damages for the involved economic operators and have impacted the well-being of citizens. Such delays disrupt planned operations and investments for businesses, impacting both economic and public operators. Immediate resolution of complaints is crucial for the seamless execution of projects and to prevent financial obstacles and disruptions for all stakeholders.

During the monitoring period, the PRB received a complaint from the EO ‘Professional Alarm LLC’ against the municipality of Pristina for the procurement activity ‘Installing cameras in the Capital.’ The estimated value of the project was EUR 1,350,000.00. However, this complaint should have been dismissed as inadmissible at the time of receipt. The operator’s complaint contradict-



During the monitoring period, PRB reviewed a complaint from EO, which had to be rejected as inadmissible

ed Article 108/A<sup>5</sup> of the LPP, as the request for review was initially dismissed as inadmissible by the CA due to being submitted outside the legally stipulated deadline. Consequently, the PRB should not have processed the complaint, meaning that no review expert should have been appointed, and the complaint should have been summarily dismissed as inadmissible.

The PRB only became aware of the administrative omission after receiving the response to the complaint from the CA, the Municipality of Pristina. This oversight granted the CA the right, as acknowledged in the published decision<sup>6</sup>. Such administrative omissions by the PRB lead to unnecessary expenses for the body, thereby adversely impacting public trust. Moreover, the CA faces significant consequences due to the absence of a contract in place.

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5 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in Republic of Kosovo article 108/a, point 3, as amended by Law No. 05/-068 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed 31 December 2023)

6 Decision number 732/23 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/0ba6badf-e082-ee11-b5bd-005056ba09d5>), (last accessed on 31 December 2023)

# Decisions in the Public Interest

According to Article 132, point 1.2 of the Public Procurement Law a contract can be partially or fully invalidated by the PRB if it is found that it was signed before the expiration of the 10-day<sup>7</sup> waiting period, from the moment of notice of contract award to the moment of contract signing.

In one case, the PRB had detected such a violation but, based on the decision in the public interest, had not suspended or terminated the contract.

For the procurement activity “Expansion of National Road N25, Prishtinë/Priština – Besi/Besinja - Podujevë/Podujevo, Lots 0, 1, 2, 3 and structures Lot 5” initiated by the contracting authority Ministry of Environment, Spatial Planning, and Infrastructure (MESPI), with a predicted value of 37,599,981.94 euros, the company Sallahu Sh.P.K., which participated in this tender, filed a complaint with the PRB on June 16, 2023, citing several violations, including failure to respect the deadline for contract signing. The PRB, 172 days later, with decision 397/23<sup>8</sup>, confirmed that the CA had violated the f the Public Procurement Law, as it had not suspended the procurement activity after the complaint to the PRB and by signing the contract without respecting the end of the waiting period after the contract award notice. Therefore, for this violation, the PRB requested the revocation of the procurement officer’s license at the contracting authority, but did not suspend or terminate the contract.

The panel left the CA’s decision, despite its contradiction with the Public Procurement Law, primarily relying on the on the general principle of public interest. This decision was grounded in Article 104, point 4<sup>9</sup> of the Public Procurement Law, which states that the PRB should consider the possible consequences of actions or measures that could harm, including the public interest. The Public Procurement Law, Article 132, point 2.4<sup>10</sup>, also provide for compensation for damages to the complaining EO, if the violations of the CA are confirmed. However, in this case, such compensation was not granted because the PRB had confirmed that the EO was at fault for failing to fulfill the tender dossier requirements.

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7 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, Article 132, point 1.2 amended and supplemented by Law No. 05/-068 (accessed last on December 31, 2023), (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>)

8 Decision No. 397/23 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/45dec33f-6d93-ee11-b5be-005056ba09d5>), (accessed last on December 31, 2023)

9 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, Article 104, point 4 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (accessed last on December 31, 2023)

10 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, Article 132, point 2.4 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (accessed last on December 31, 2023)

# Lack of Consistency in Decision-Making

To ensure consistency in decision-making, the PRB has yet to develop a detailed methodology facilitating uniform decisions and equitable treatment of complaints. During the launch event for internal use of the Case Management System (CMS), the PRB announced that this system will help the board of PRB to ensure uniform decisions and equitable treatment of complaints. The CMS, designed for internal use, aimed to enhance decision-making consistency by enabling the receipt of complaints in a readable format and allowing the board to access all complaints and decisions on a case-by-case basis<sup>11</sup>.

However, despite advancements in decision consistency during this monitoring period, and with the PRB now utilizing an internal database for this purpose, D+ has observed that there is still room for improvement in this regard. Specifically, a lack of consistency was noted in one case.

When a complaint from an EO is deemed unfounded, the complaint filing fee is typically forfeited. However, in a specific instance, the PRB did not forfeit the complaint filing fee from the complaining operator despite rejecting the complaint. For the procurement activity 'Upgrading electronic procurement platform - connection with the Treasury system,' initiated by the Central Procurement Body with an estimated value of EUR 75,000.00, EO 'Cactus Sh.A' filed a complaint against the decision to award the contract. The case expert reviewing the complaint favored the complaining EO, recommending the cancellation of the contract award decision and a re-evaluation of the case. However, the review panel concluded that the actions of the CA and the evaluations by the review expert did not provide sufficient grounds for re-evaluating the procurement activity. In this case, the PRB rejected the complaint, allowing the CA's decision to remain in effect, but opted to refund the appeal fee<sup>12</sup>. The complaint filing fee was reimbursed to the complaining operator at the moment the complaint was considered justified or if the operator withdrew the complaint. The Public Procurement Law does not stipulate refunding the fee if the appeal is withdrawn. Instead, it's the PRB's Working Regulation that specifies the cases in which the fee is refunded following the withdrawal of the appeal.

In a specific instance, the PRB did not forfeit the complaint filing fee from the complaining operator despite rejecting the complaint

The PRB justified this decision by referring to its work regulations, specifically Article 31, point 6<sup>13</sup>. According to this regulation, if a complaint is deemed justified or the EO withdraws the complaint, the complainant is eligible to reclaim the deposit made at the time of submitting the complaint.

<sup>11</sup> Procurement Review Body, press release, 31.01.2023. <https://oshp.rks-gov.net/sq/Pages/Details?Id=351>

<sup>12</sup> PRB decision (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/2776fda8-777d-ee11-b5bd-005056ba09d5>), (last accessed on 31 December 2023)

<sup>13</sup> Regulation of the Work of Public Procurement Review Body of Kosovo, article 31, point 6 (<https://oshp.rks-gov.net/sq/Documents/Download?Id=0d49ce49-afc2-eb11-b59b-005056ba09d5>), (last accessed on 31 December 2023)

# Decisions of the Review Panel without Conclusion

The primary role of the PRB as an oversight authority is to assess the legality of decisions made by CA's in response to complaints. However, during this period, D+ observed instances where the PRB issued decisions without reaching a definite conclusion. In several cases, the PRB concluded procedures without clearly siding the CA or the EO. Despite the absence of a conclusive decision, the PRB recommended that complaining operators pursue the case in court.

In three cases, the decisions of the Review Panel were without a clear conclusion

Case Example: Skenderaj/Srbica Municipality vs. Group of EOs (GOE) Everlight SHPK, NNSH RISI-COM, ITE Engineering SHPK Branch in Kosovo

On September 29, 2023, the Municipality of Skenderaj/Srbica, as the CA, published a contract notice for the procurement activity titled “Energy services according to administrative instruction no. 06/2021 for energy services (ESCO).” The CA had implemented an open procedure for this service contract, with an estimated value of EUR 2,500,000.00. The bid opening for this procurement activity was conducted on October 19, 2022. Only one EO, bidding as a group of EOs, participated in this procurement activity. Subsequently, on December 6, 2022, the CA published the notice on the decision of the CA, declaring the winner GOE Everlight SHPK, NNSH RISI- COM, ITE Engineering SHPK Branch in Kosovo as the winner.

Following the legal deadline for requests for review, and with no such requests received, in accordance with the legal deadlines defined in the LPP, namely Article 108/A<sup>14</sup>, the CA published the contract award notice on December 13, 2022. After the contract award notice, the CA took no further action for seven months. On July 17, 2023, a notice was issued canceling the procurement activity, citing a lack of budget funds. The reasoning behind the cancellation, “due to the lack of budget funds” was based on article 9 of the LPP, Paragraph 3<sup>15</sup>, Article 8 of Regulation no. 001/2022 for Public Procurement and Guidelines 001/2023, which do not confirm the commitment of funds.

Discontent with this decision, the EO “Everlight,” previously announced as the contract winner, submitted a complaint to the PRB on August 4, 2023 [protocol number 547/23<sup>16</sup>]. The review expert in this matter recommended overturning the CA's decision to cancel the activity and urged the continuation of the procurement process.

Meanwhile, the Review Panel refrained from making a decisive judgment either in favor of the CA decision to cancel the activity or against the complaint lodged by the EO “EVERLIGHT Sh.P.K.” In this unique case, the Review Panel issued a decision without a conclusive finding, advising the complaining EO to seek redress in the competent court—a practice not previously encountered. The PRB justified this approach by asserting that, with

<sup>14</sup> Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 108/A, (last accessed on 31 December 2023)

<sup>15</sup> Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 9, point 3, (last accessed on 31 December 2023)

<sup>16</sup> PRB decision (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/f408b397-c532-ee11-b5ba-005056ba09d5>), (last accessed on 31 December 2023)

the CA's publication of the contract award notice, the procurement activity is considered closed. The PRB argued that the time for lodging complaints with both the CA and the PRB had lapsed, and the CA's actions occurred after the closure of the procurement activity.

The Review Panel in its decision had identified the violations committed by the contracting authority (CA) in this procurement activity. The PRB found that the CA, in canceling this procurement activity, had violated the legal provisions for public procurement. Since Article 62 of the Public Procurement Law<sup>17</sup> specifies the cases in which a procurement activity may conclude, and also Article 43 of the PRB's Regulation<sup>18</sup> defines the cases in which the procurement procedure may be interrupted, the PRB did not find the CA's justification for interrupting this procedure reasonable in any of these provisions. The Review Panel had identified the legal provisions for public procurement that are relevant to these actions of the CA. This is because the CA is obliged to ensure the legality of each action in accordance with legal provisions, which should be verified before initiating the procurement activity as well as in subsequent stages, not at the stage when the contract award notice is published, when the contract is expected to be signed by the parties. With the publication of the contract award notice by the CA, the procurement activity is considered closed because the time for appeals to the CA and the PRB has also passed, and these actions of the CA occur after the closure of the procurement activity.

The Review Panel had assessed that its function regarding this case concludes with the publication of the contract award notice and the expiration of the deadlines for appeals to the CA and the PRB. The PRB based its decision on Article 10 of the Public Procurement Law, which does not specify when the function of the PRB concludes in the handling of an appeal, but rather speaks to transparency in the public procurement process. Point 3 of this article<sup>19</sup>, on which the PRB also based its decision, specifies the cases in which the parties of interest cannot request access to the documents of a procurement activity, thus it does not speak to the period when the PRB's function concludes regarding the handling of an appeal by this body.

### **Ministry of Health vs. "Infosoft Systems"**

In the procurement activity "Maintenance of 70% of the Hardware of the Health Information System for Health Institutions," initiated by the Ministry of Health (MoH) with an estimated value of EUR 720,000.00, the Review Panel took a similar approach as observed in the case of Skënderaj Municipality. The complaint from the EO "Infosoft Systems" against the Ministry of Health's decision to cancel the procurement activity was deemed unfounded by the reviewing expert. Contrary to the case of CA Municipality of Skenderaj/Srbica, reviewing expert propose upholding the CA's decision and dismiss the complaint as ungrounded. Despite the expert's opinion, the Panel did not endorse it and, in its decision, recommended the EO to seek resolution in court without validating of the CA's decision.

### **Ministry of Health vs. "Flamur Isufi" B.I.**

In a parallel scenario, the Review Panel reached a similar conclusion in the administrative review of the procurement activity titled "Supply of equipment for the microbiological laboratories in the National Institute of Public Health Lot 2," initiated by the MoH with an estimated value of EUR 359,600.00. The MoH had issued a notice to cancel the contract signing, citing suspicions of competition restriction. The expert assessing the complaint from

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17 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 62, (last accessed on 31 December 2023)

18 Regulation of the Work of Public Procurement Regulatory Commission, article 43 (<https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Rregulloret/shq/Rregulloret%20e%20Pun%C3%ABs%20e%20Komisionit%20Rregullativ%20t%C3%AB%20Prokurimit%20Publik.pdf>)

19 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 10, point 3, (last accessed on 31 December 2023)

the EO “Flamur Isufi” B.I. submitted to the PRB, considered the complaint to be well-founded and recommended the re-evaluation of the procurement activity. However, the Review Panel, similar to previous cases, did not align with the expert’s opinion. In its decision, the Panel suggested that the EO seek a resolution in court, without acknowledging the CA’s decision.

It is crucial to emphasize that the PRB has a mandate and a legal obligation<sup>20</sup> to address the claims of the complaining party and, based on this mandate, issue a decision within the stipulated legal deadlines. Consequently, concluding procedures without a decision from the PRB indicates a failure to fulfill its duties and neglect of the core function of the PRB.

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20 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, articles 98, 99 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772> ), (last accessed on 31 December 2023)

# Delays in Decision-Making

As per the LPP<sup>21</sup>, the PRB is mandated to publish the decision on its website within 34 days of receiving a complaint from the EO. The procedural timeline involves a 10-day period for the Examining Expert to assess the complaint,<sup>22</sup> followed by four days for the CA and the EO to respond to the expertise<sup>23</sup>. Subsequently, the PRB has 15 days to reach a decision, and within the next five days, it must publish the decision<sup>24</sup>, totaling 34 days. However, in specific cases where the PRB deems a case to be complex, it holds the authority to extend the deadline for issuing a decision by up to 20 days. In such instances, the PRB is obligated to provide a justification and a statement to rationalize the extension.

During the monitoring period, the PRB issued a total of 406 decisions on complaints submitted in the second half of 2023. Additionally, the PRB addressed 173 cases transferred from the first half of 2023, resulting in a total of 579 decisions published from July 1 to December 31, 2023. The challenge of exceeding the legal deadline for handling cases persisted during this reporting period. Out of the 579 published decisions, only 147 complaints were addressed within the mandated legal deadline of 34 days. Notably, more than half of these decisions were related to untimely or unauthorized appeals, which are not considered by the panel.

As stipulated by the LPP, beyond the 34-day period, the PRB has the authority to extend the deadline for issuing a decision by a maximum of 20 days, totaling 54 days<sup>25</sup>. However, such extensions must be accompanied by a rationale and a statement justifying the need for the extension.

579

decisions by the PRB during the period July-December 2023

Only 147

decisions within the time limit set by law

21 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, articles 115, 116 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 31 December 2023)

22 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 114, point 1, (last accessed on 31 December 2023)

23 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 115, point 1, (last accessed on 31 December 2023)

24 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 117, point 1, (last accessed on 31 December 2023)

25 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 117, point 1, (last accessed on 31 December 2023)



## During the monitoring period D+<sup>26</sup> found that:



In **147**

cases, the PRB issued a decision within a timeframe of 34 days.



In **142**

cases, the PRB issued a decision within the extended timeframe of 54 days.



In **290**

cases, the timeframe of 54 days was exceeded.



**57**

cases required more than 100 days for the PRB to issue decisions.

## During monitoring, D+<sup>27</sup> identified the complaints with the longest decision-making deadline:

Extension of the National Road N25, Prishtinë/Priština – Besi/Besinje – Podujevë/Podujevo, Lot 0, 1, 2, 3 and structures Lot 5, 172 days until the publication of the decision.

Construction of the Primary and Lower Secondary School in Pozharan/ Požaran - Municipality of Vitia/ Vitina - continuation of works, 166 days until the publication of the decision.

The asphaltting of roads in the village of Gadish took 138 days until the publication of the decision.

<sup>26</sup> The data were acquired from the website of the PRB (<https://oshp.rks-gov.net/sq/default/index>)

<sup>27</sup> The data were acquired from the website of the PRB (<https://oshp.rks-gov.net/sq/default/index>)

# Partially Grounded Decisions and Non-Forfeiture of Complaint Filing Fee

Any EO wishing to contest the decision of a CA is required to pay an appeal fee, the cost of which can range between EUR 100 and 5000<sup>28</sup>. As per the Regulation of the Work of the PRB, if the allegations in a complaint are found to be ungrounded, the PRB is obligated to forfeit the complaint filing fee.<sup>29</sup>

During the monitoring period by D+, the complaint fee against EOs was forfeited in 117 cases, totaling EUR 149,940.66. This amount is EUR 60,007.67 less than in the first half of 2023<sup>30</sup>, when fees were forfeited in 97 cases.

According to the PRB's Working Regulation, the appeal fee is not forfeited if the appeal is withdrawn before its consideration or before appointment of the expert, and before acceptance of the expertise, or if it is deemed inadmissible by the PRB. Unlike the first half of 2023, in the second half, the PRB has reinstated the practice of partially approving appeals, leaving the CA's decision in force, thereby ensuring that the fee is not forfeited. It is worth noting that partial approval is not specified in any case in the Public Procurement Law.

For the procurement activity titled 'Supply of Inventory (furniture) and security safes for the needs of the Ministry of Defense (MoD) and the Kosovo Security Force divided into two parts: 1. Supply of inventory for the office and 2. Supply of security safes-initiated by the MoD, with an estimated value of EUR 150,000.00, the Review Panel addressed one of the claims from the complaining operator "Graniti" Sh.P.K. The claim stated that the CA had not provided facts and evidence in response to the rejection of the request for review. The Review Panel categorized this claim as partially grounded, but this classification did not necessitate a reevaluation of the activity.

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28 Official Gazette of the Republic of Kosovo, Law on Public Procurement in the Republic Kosovo (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), Article 118, point 4, (last accessed on 31 December 2023)

29 Regulation of the Work of Public Procurement Review Body (<https://oshp.rks-gov.net/sq/Documents/Download?Id=0d49ce49-afc2-eb11->), (last accessed on 31 December 2023)

30 PRB Monitoring Report from D+ (January - June 2023), ([https://dplus.org/wp-content/uploads/2023/09/18-09-23\\_Assessing-the-Procurement-Review-Body-A-Six-Month-Review-and-Recommendations.pdf](https://dplus.org/wp-content/uploads/2023/09/18-09-23_Assessing-the-Procurement-Review-Body-A-Six-Month-Review-and-Recommendations.pdf))

# Transparency

During the second half of 2023, the PRB made progress in enhancing the transparency of its work. However, there remain certain issues that warrant attention in the future. The official website of the PRB is recognized as a valuable tool for enhancing transparency within the institution; however, persistent issues remain. The practice of uploading documents in scripted format on the website persists, making it difficult to search the text and rendering the document unreadable by a computer.



The PRB made progress in enhancing the transparency of its work, there remain certain issues that warrant attention in the future.



The PRB website continues to have shortcomings.



CA requests for inclusion in the disqualifying list of EOs are not published on the website.

During the period July to December 2023, the PRB published decisions on its website regarding EOs placed on the disqualification list in response to requests from CAs. Four EOs were added to this list. However, in decision 413/23<sup>31</sup>, the uploaded document on the website lacks page two of the decision, which contains the full reasoning of the PRB's decision to disqualify the EO from procurement activities for a period of 3 months. The organization still does not publish in real-time on its website the requests from CA's proposing that an EO be included in the disqualification list. Part of the request becomes public only when the PRB makes a decision regarding that request. The publication of requests from CA's to include EOs on the disqualification list for violating the Public Procurement Law would enhance the transparency in the PRB. In a specific instance, the publication of the PRB's decision caused uncertainty among stakeholders. For cases 920 and 934/23, where the complaints of the EOs 'NTSH Sharr Travel' and 'Autotransporti Sh.A.' were rejected, the decision published by the PRB stated that the complaints were grounded. Such a technical omission creates room for different interpretations. The PRB should exercise caution when publishing decisions to avoid misunderstandings, possibly by publishing a conclusion that clarifies any errors.

31 Decision No. 413/23 (<https://oshp.rks.gov.net/sq/Documents/Download?id=0365e57b-7888-ee11-b5be-005056ba09d5>), (last accessed on 31 December 2023)

Moreover, the website faces issues related to the incorrect publication of dates. Many complaints, decisions, and expertise have inaccuracies with the date of publication listed in the system.

In some cases, the date of the complaint appears to be the same as the date of the decision by the Review Panel, creating confusion. This problem is evident in case number 437/23<sup>32</sup>, where the complaint and the decision by the Review Panel seem to have the same date. Another example is case number 476/23<sup>33</sup>, where the expertise was not published until after the Review Panel's decision. Unlike before, the precise dates of the complaints and the decisions are not easily accessible but require searching within the uploaded documents. D+<sup>34</sup> encountered numerous instances during monitoring where dates were incorrectly published in the system (e.g., cases 476, 490, 491, 516, 548, 582, 605, 612, 685, 695, 764, 983, 984/23).

Another concern related to transparency involves the live streaming of hearings through the YouTube platform, which remains problematic. Although a written record is kept during the session, the complaining EO can only view the session on the YouTube platform after it concludes. However, to obtain the link in advance, a written request must be submitted to the PRB.

Ensuring public access to hearings through live broadcasts is a crucial aspect of transparency. Unfortunately, the hearing schedule is not updated on the PRB's website. The PRB justifies this practice by expressing concerns about potential abuses by third parties. As a result, the only method to access the broadcasts is by submitting an official request to the PRB, which then provides the link. Delays in the response to these requests could have negative consequences for interested parties and directly impact the transparency of the institution.

During the reporting period, there were instances when hearings were not broadcast live due to technical issues, as reported by the PRB. Cases where the session was not broadcast live include cases 543/23<sup>35</sup> and 267/23<sup>36</sup>.

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32 PRB case number 437/23 ([https://oshp.rks.gov.net/sq/ProcurementActivities/Search?\\_](https://oshp.rks.gov.net/sq/ProcurementActivities/Search?_)), (last accessed on 31 December 2023)

33 PRB case number 476/23 ([https://oshp.rks.gov.net/sq/ProcurementActivities/Search?\\_](https://oshp.rks.gov.net/sq/ProcurementActivities/Search?_)), (last accessed on 31 December 2023)

34 The data were acquired from the website of the PRB (<https://oshp.rks.gov.net/sq/default/index>)

35 Case number 543/23 (<https://oshp.rks.gov.net/sq/ProcurementActivities/Download/6e0726c1-2a73-ee11-b5bd-005056ba09d5>), (last accessed 31 December 2023)

36 Case number 267/23 (<https://oshp.rks.gov.net/sq/ProcurementActivities/Download/34bec04e-3530-ee11-b5ba-005056ba09d5>), (last accessed 31 December 2023)

# Engagement of Experts, Errors, and Inadequate Handling of Cases


If the PRB determines that the complaint was submitted on time by the EO and fulfills the conditions outlined in paragraph 1 of Article 111<sup>37</sup> of the LPP, it will promptly proceed with the appointment of a review expert, in accordance with Article 113<sup>38</sup> of the law.

According to Article 114 of the LPP<sup>39</sup>, within ten (10) days from the appointment, the Review Expert will thoroughly examine the procurement documentation of the CA along with relevant notes. If deemed necessary or appropriate, the expert may conduct interviews with officials, employees, or advisors from both the CA and the complaining party. Subsequently, the review expert will provide a comprehensive written assessment of the procurement activity in question to the PRB Review Panel, the complainant, and the head of the CA.

The Review Expert plays a crucial role in the process by recommending necessary corrective actions to be taken by the CA. These actions may include canceling the procurement activity, the contract award, or the result of a design contest; extending a deadline; reversing or voiding a decision of the CA; and/or taking any other action needed to correct a violation by the CA<sup>40</sup>. During this period, it has been observed that the expert opinions of the review experts have been issued on time.

The appointment of Review Experts in the PRB was previously conducted manually, but with the recent integration of the electronic system within the PRB, there is now a mechanism that automatically generates a recommendation of three experts for each case considered by the review panel. From this list, the PRB administration appoints the most appropriate expert to conduct the necessary assessment. In a previous report, D+ recommended changing the form of expert appointment<sup>41</sup>. D+ has suggested that the electronic system within the PRB should automatically decide on the expert who will examine the given subject, which would enhance the transparency of the PRB's work. However, this recommendation has not been taken into account.

The PRB considers that the manual selection of the expert from the administration, following the recommendation of three names by the system, persists due to several reasons. These include the potential for repeated cases, scenarios where one expert may lack the required professional expertise, the necessity for another expert, and instances where the complexity of the cases demands flexibility, thus avoiding unnecessary limitations and saving time. D+ remains committed to the idea, that modifying the expert selection pro-



The assignment of experts to the PRB is done semiautomatically

37 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, Article 111, point 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed 31 December 2023)

38 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, article 113, amended by Law No. 05/L-068 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 31 December 2023)

39 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, Article 114, point 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 31 December 2023)

40 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic of Kosovo, article 114 on Responsibilities of the Review Expert (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 31 December 2023)

41 PRB Monitoring Report from D+ (January - June 2023), ([https://dplus.org/wp-content/uploads/2023/09/18-09-23\\_Assessing-the-Procurement-Review-Body-A-Six-Month-Review-and-Recommendations.pdf](https://dplus.org/wp-content/uploads/2023/09/18-09-23_Assessing-the-Procurement-Review-Body-A-Six-Month-Review-and-Recommendations.pdf))

cess, specifically by suggesting only one candidate through the system, would contribute to enhancing transparency within this organization. This change in the system should also include the possibility of changing the name of the recommended expert, always accompanied by a document explaining why such a change has occurred.

Regarding the engagement of review experts, D+ has noted during the monitoring period that expert opinions were generally issued within the legal deadlines. Nonetheless, certain concerns have been identified, including instances where the expert opinions fail to address all reviewed claims and where there is a deficiency in providing detailed reasoning within the issued opinions. For the EO's complaint SolVIT Sh.P.K., against the CA Municipality of Pristina, for the activity "Supply of smart boards for educational institutions in the Municipality of Pristina," the review panel was forced to engage review experts in two cases. The first time, the reviewing expert recommended that the complaint be rejected as ungrounded, and the decision of the CA to award the contract remains in force. However, the review panel rejected the review expert's opinion, stating that it was not drawn up in accordance with Article 114 paragraph 1, in relation to Article 113 of the LPP<sup>42</sup>, without providing details on which parts of these articles were not respected.

**In general,  
expert opinions  
are published  
within legal  
deadlines**

On the other hand, the panel gave full confidence to the second expertise for the same procurement activity. The expert recommended that the complaint be approved as partially grounded, and the matter be returned for reevaluation.

In another case, for the procurement activity 'Supply of laboratory material'<sup>43</sup> initiated by the Gjilan/Gnjilane Municipality, the reviewing expert did not consider the complaint of the EO who alleged that the EO recommended for the contract had offered irrelevant equipment/materials. The review panel disagreed with the expert's opinion, stating that the expert had not provided detailed explanations and had described the complaint as ungrounded. The review panel concluded that the expert's reasoning was incomplete without providing further details, and this action contradicts Article 108/A<sup>44</sup>, point 8 of the LPP, which specifies that the refusal must be justified in detail. Additionally, the panel found that the review expert had not provided convincing arguments, facts, and evidence to convince the review panel that the EO recommended for the contract had bid in accordance with the Tender Dossier and mandatory technical specifications. Case 366/23<sup>45</sup> was also notable, where two review experts came up with opposite recommendations to each other within a 30-day period.

In another case, the procurement activity 'Generator supply' initiated by Gjilan/Gnjilane Municipality (Case 212/23<sup>46</sup>), the external expert did not fully address the claims of the complaining party but assessed that the complaint was ungrounded. This action prompted the Review Panel to issue a decision that the complaint of the complaining party "Eor Group" sh.p.k & "Contanti Generators" be approved as grounded, and that the above-mentioned activity be reevaluated.

42 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in the Republic Kosovo, article 114, point 1 (<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed on 31 December 2023)

43 Decision number 179/23 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/f75e57ad-c8f0-ed11-b5b8-005056ba09d5>), (last accessed on 31 December 2023)

44 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement in Republic of Kosovo article 108/a, as amended by Law No. 05/-068(<https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>), (last accessed 31 December 2023)

45 Decision number 366/23 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/bec51d99-092a-ee11-b5ba-005056ba09d5>), (last accessed on 31 December 2023)

46 Decision number 212/23 (<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/bec51d99-092a-ee11-b5ba-005056ba09d5>), (last accessed on 31 December 2023)

# Conclusions

BASED ON THE FINDINGS FROM THE SECOND SIX-MONTH MONITORING, THE PRB CONTINUES TO FACE SEVERAL SIGNIFICANT CHALLENGES, INCLUDING:

## Delays in Decision-Making

A persistent issue faced by the PRB is its failure to adhere to legal deadlines for the publication of decisions. This ongoing problem not only undermines the efficiency and effectiveness of the public procurement process but also erodes stakeholders' confidence in the PRB's ability to address complaints promptly and fairly.

The repercussions of these delays affect the overall timeline of public procurement activities.

When complaints are not resolved swiftly, and decisions are delayed beyond the stipulated timeframe, it disrupts the procurement processes. Such uncertainty affects all involved parties, including CAs and EOs, potentially leading to project delays, financial setbacks, and missed opportunities for economic development.

These delays can be especially harmful in cases where procurement activities are seasonal or time-sensitive. For instance, tenders related to winter or summer road maintenance or the supply of goods for specific events may have limited operational windows. Delays in decision-making may render the purpose of these activities obsolete or less effective, negatively impacting the efficiency and cost-effectiveness of projects.

Furthermore, exceeding legal deadlines undermines the integrity and reputation of the PRB as an independent and impartial body responsible for resolving procurement disputes. This failure to meet deadlines may lead stakeholders, including EOs, CAs, and the general public, to perceive the PRB as inefficient or unable to fulfill its mandate, resulting in diminished trust in the institution.

## Lack of Consistency in Decisions

The PRB faces a significant challenge with inconsistency in decisions, undermining its credibility as the institution designated for scrutinizing public procurement complaints. This inconsistency raises concerns about the fairness and impartiality of the review process, leading stakeholders, particularly EOs, to experience unpredictability and varied outcomes, fostering a sense of uncertainty.

## Decisions of the Review Panel Lacking Conclusion

The ambiguity in PRB decisions poses a challenge for operators attempting to comprehend the criteria applied in evaluating their complaints. This lack of clarity may discourage EOs from pursuing legitimate grievances due to perceptions of bias or opacity in the process.

Furthermore, when the PRB refrains from making a definitive ruling for or against an EO complaint, deferring the decision to competent courts, it undermines public confidence in the PRB's ability to uphold transparency and accountability in public procurement.

## Engagement of Experts

The effective operation of the PRB is heavily reliant on the expertise of its review panel, particularly in specialized fields such as information technology and medicine. Addressing the challenge of engaging knowledgeable experts and broadening the panel's expertise is vital to ensuring the PRB can competently address complex and technical complaints with accuracy and proficiency.

## Lack of Transparency

Enhancements in transparency within the PRB's operations are still required. This includes streaming all hearing sessions online, providing accessible links for public viewing, publishing appeals and decisions in a readable format on the official website, and ensuring the availability of necessary documentation, including publishing requests from CAs for the disqualification of EOs.

# Recommendations

IN RESPONSE TO THE REPORT'S FINDINGS, D+ SUGGESTS THE FOLLOWING MEASURES TO ENHANCE THE PRB'S PERFORMANCE:

1

## Improve Data Flow:

Enhance the PRB's database to facilitate easy retrieval of decisions on specific issues, fostering consistent decision-making. A robust IT infrastructure will optimize case management, ensure secure document storage and retrieval, eliminate database errors, and elevate transparency and data access standards, ultimately leading to improved efficiency and streamlined operations for the PRB.

2

## Publication of Expected Decisions:

Compile a comprehensive list of common requests from EOs and proactively publish anticipated decisions on these matters. This proactive approach provides EOs with advanced knowledge, potentially reducing the number of complaints. PRB should work towards establishing well-defined and uniform criteria for decision-making across various cases. Standardization simplifies the process, fostering a more consistent decision-making approach and ensuring fairness in addressing received complaints.

3

## Elimination of Decisions without Conclusion:

Strictly implement legal powers and functions, eliminating the practice of rendering decisions without a definitive finding. This commitment ensures clarity and reliability in PRB resolutions.

4

## Automated Selection of Experts:

Modify the system to generate the name of a single expert instead of providing three recommendations. This adjustment enhances transparency, mitigates favoritism, and enhances accountability, considering the crucial role played by experts in PRB proceedings.

5

## Evaluation of Expert Performance:

Regularly assess the performance and quality of experts' work to ensure professionalism and impartiality, particularly in cases of inadequate performance. PRB should prioritize the recruitment of internal experts, and reduce the recruitment of external experts. PRB should prioritize focusing on critical areas such as IT and medical devices, to address cases with greater accuracy and efficiency. Implement training programs and professional development opportunities to elevate the expertise and greater consistency within the PRB.

6

## Elimination of 'Complaint is Partially Grounded' Practice:

Discourage review experts from categorizing cases as "partially grounded" to streamline the decision-making process for the Review Panel as it is against the law.



7

### **Publication of Fines Imposed on Contracting Authorities:**

Publicly disclose a list of CA fined for non-compliance with PRB decisions. This measure serves as a deterrent against future violations.

8

### **Claims for Disqualification Transparency:**

Publicize requests for disqualification (blacklisting) from CA for EOs. Publish these requests at the time of submission, providing an overview of the number of requests and the PRB's decision timeline.

9

### **Access to Documents:**

Maintain all substantive documents, including decisions, appeals, and expert reports, in a computer-readable electronic format for convenient public access. This step significantly enhance the transparency and accountability. Release comprehensive annual reports containing information about CA's that have not complied with PRB decisions, performance metrics, statistics on backlog, new cases, and their outcomes. This allows interested parties to evaluate the effectiveness and efficiency of the PRB.

10

### **Enhanced Transparency:**

Live stream all hearings, ensure accessible links to past hearings, and publish complaints and decisions in a clear and readable format on the official website. These actions enhance transparency and facilitate public access to PRB procedures. Conduct the process of amending the Regulation on the Work of the PRB transparently. Allow stakeholders the opportunity to provide comments by publishing the draft regulation on the PRB website. This inclusive approach ensures openness in regulatory changes and encourages stakeholder engagement.

