## Rules for filing request for review within the Contracting Authorities, filing complaints within the PRB and the value of the compliant fee

Public Procurement Regulatory Commission in accordance with Article 87, paragraph 2, sub-paragraph 2.8 and Article 118, paragraph 1, of Public Procurement Law No 04/L-042, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No. 05/L-092, adopts these rules which complement and provide clarifications for filing requests for review within the Contracting Authorities and for filing complaints within the PRB and determine the value of the complaint fee to the PRB.

**Article 1**

**Scope**

The scope of these rules is to provide clarifications to the Contracting Authorities and the Economic Operators in regard to **filing a request for review within the Contracting Authority and filing a complaint to the PRB** and to determine the value of the fees for filing the complaint to the PRB. The purpose of the new provision, presented in Article 108/A of the Law Nr. 04 / L-042 on Public Procurement of the Republic of Kosovo, as amended and supplemented with the Law no. 04 / L-237, Law no. 05 / L-068 and Law no. 05 / L-092, is to put the contracting authorities in a position to review their decision before being involved in a judicial procedure and, at the same time, to facilitate the access to the remedy system to all the interested economic operators. Such option may thus reduce the risk of litigations, with a double benefit in terms of reduction of complaints before the competent Courts as well as in terms of reduction of costs to be faced during a judicial procedure (that sometimes prevent small economic operators from submitting complaints). In this context, a two-instance procedure for filing complaints is introduced.

1. Initially a **Request for Review** by interested parties is submitted **to the Contracting Authority** which conducted the procurement activity; and
2. In the event that the interested party is not satisfied with the decision taken by the Contracting Authority in question, it may file a **Complaint to the PRB.**

**Article 2**

**Terms used**

Terms used in these Rules have the same meaning as mentioned in Article 4 (Definitions) of the Public Procurement Law No. 04 / L-042, as amended and supplemented with Law no. 04 / L-237, Law no. 05 / L-068 and Law no. 05 / L-092.

**Article 3**

**General information**

3.1 According to article 108/A of Public Procurement Law No 04/L-042, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No. 05/L-092, a request for review may be submitted, **free of charge,** by an interested party **at any stage** of any procurement activity and with respect to **any act or omission** of the concerned contracting authority that is alleged to be in violation of the present law, or acts issued in its implementation within the **Contracting Authority which conducted the procurement activity.** Requests for review may relate to **contract notices, tender documents or other announcements and decisions**, in the course of performance of the concerned procurement activity.

3.2 The Standard forms may be downloaded from the PPRC’s or PRB’s websites: [**www.krpp.rks-gov.net**](http://www.ks-gov.net/krpp) or [**www.oshp.rks-gov.net**](http://www.oshp.rks-gov.net).

1. Standard Form F01 - Standard form for filing a complaint within the PRB
2. Standard Form F02 - Standard form for filing a request for review within the Contracting Authority

3.3 In accordance with paragraph 1 of Article 109 of the PPL, a complaint to the PRB may be submitted only after a preliminary procedure for resolution of the dispute. Thus, the complaint initially has to be submitted to the Contracting Authority and in the event that the interested party is not satisfied with the decision taken by the Contracting Authority in question, it may file a Complaint to the PRB.

1. **FILING A REQUEST FOR REVIEW TOTHE CONTRACTING AUTHORITY**

**Article 4**

**Time period for submission of a request for review to the Contracting Authority**

4.1 The request for review must be submitted in writing to the contracting authority, by mail or by any other means of communication permitted by the Law, within the following time limits:

1. Whenever the request for review relates to the contract notice or the tender documents at least **five (5) days prior to the deadline for submission of bids.**
2. Whenever the request for review relates to the decision to award a contract or design contest, **within five (5) days after the date of notification of the contract award notice or the design contest results are sent to the complainant.**
3. Whenever the request for review relates to the decision to terminate the procurement procedure, within **five (5) days from the date the procurement activity was formally terminated through a termination notice.**

4.2 The contracting authority, respectively the responsible procurement officer, should ensure that the **date of publication** of a Contract award notice/ Design contest result notice / Cancellation notice of the procurement activity, is the **same date** as the date when the contracting authority formally notifies the economic operator about the outcome of the procurement activity. In case of discrepancies of the dates, the date when the written notification is sent to the Economic Operator prevails. The date of notification is "day 0" of 5-day mandatory period "standstill period".

**Article 5**

**Basic Contents of a request for review submitted to the Contracting Authority**

The request for review shall contain:

* 1. the name, the postal address, the electronic address, and contact information of the complainant;
  2. the name of the concerned contracting authority;
  3. sets forth a reasonably specific description of the concerned procurement activity;
  4. attaches a copy of the concerned contract award notice or design contest results notice, if such has been issued or published.
  5. demonstrates that the complainant qualifies as an “interested party,” as defined under Section 4 of the present law;
  6. describes the factual circumstances constituting or giving rise to the alleged violation;
  7. specifies the provision or provisions of the PPL law that is alleged to have been violated; and
  8. describes how the alleged violation has caused, or threatens to cause, material damage to the complainant in cases where the complainant includes a claim for compensation.

**Article 6**

**Suspension of the procurement activity**

6.1 The filing of the request for review **suspends automatically** the procurement procedure and in this case, the Contracting Authority, **respectively the responsible Procurement Officer**, shall notify in writing **all interested parties** regarding the suspension of the procurement procedure in question.

1. Whenever the suspension mentioned relates to the **decision to award the contract**, such suspension will not end before the expiration of a period of at least 10 calendar days with effect from the day following the date on which the contracting authority has issued a reply.
2. Whenever the suspension mentioned relates to the **contract notices, tender documents**, such suspension will end immediately after the issuance of the decision by the contracting authority, respectively the responsible Procurement Officer.

6.2 If the request does not contain part of the information referred to in article 4 of these rules, the Contracting Authority, respectively the **responsible Procurement Officer,** will require the applicant to complete the request within a period not longer than two (2) days from receipt of the request. If the complainant does not act upon the above request, the request for review will be rejected as incomplete.

6.3 The contracting authority, respectively the **responsible Procurement Officer,** will examine the request within **three (3) business days** from the date of lodging the application or, where applicable, from the date of receipt of additional information and documents set forth in article 6.2 of these rules. This time limit, in justified specific cases may be extended but not longer than **three(3) additional days**, and the complainant will be informed thereof.

**Article 7**

**Rejection of the request for review**

7.1 The contracting authority, respectively the **responsible Procurement Officer,** shall reject a request for a review when:

1. the request is not lodged within the time limits set forth in article 4 of these rules; In accordance with Article 7.1 (a) of these rules:
2. Whenever the rejection of the application relates to the **decision to award the contract**, the contracting authority must wait at least 10 calendar days with effect from the day following the date on which the contracting authority has taken a decision
3. Whenever the rejection of the application relates **contract notices, tender documents**, the contracting authority continues further with the procurement procedure.
4. the complaint is not lodged against a notice or decision as referred to in article 3.1 of these rules ;
5. the complaint does not comply with the requirements referred to in article 5 and 6.2 of these rules;
6. the contracting authority, respectively the **responsible Procurement Officer,**  has reviewed its decision in terms of what is required from the complainant.

7.2 The refusal shall be justified and communicated in writing, by the responsible Procurement Officer, **to the complainant and all concerned parties, if any**

7.3 Furthermore, the contracting authority**, respectively the responsible Procurement Officer**, upon receipt of a written notice from the complainant of his willingness to withdraw the submitted request for review, can preclude further procedure.

**Article 8**

**The decision of the Contracting Authority**

8.1 The contracting authority, **respectively the responsible Procurement Officer** may, by the means of a decision:

* + 1. **reject** the proposed request for review as ungrounded;
  1. Whenever the rejection of the request relates to the decision of the **award of the contract**, the Contracting Authority, for the contract signature, must wait at least 10 calendar days with effect from the day following the date on which the contracting authority has taken a decision
  2. Whenever the rejection of the request relates to **the contract notices, tender documents**, the contracting authority will proceed further with the procurement procedure.
     1. **approve** a request for review as grounded and partially or completely cancel the approved decision;

1. Whenever the rejection of the request relates to the decision of the **award of the contract**, the Contracting Authority, shall publish the cancellation of the contract award notice by using the standard form B11, and will continue with the re-evaluation of the procurement activity.
2. Whenever the rejection of the request relates to **the contract notices, tender documents**, the Contracting Authority shall publish the notice for the correction of errors by using the standard form B54 and will extend the deadline of submission of tenders in accordance with Article 53 of the PPL.
   1. The Contracting Authority’s decision is mandatory for the contracting authority and should be implemented immediately. The decision must be justified and communicated in writing, **to the complainant and all concerned parties, if any.** In cases where a responsible procurement officer does not issue **a decision** regarding the request for review, the Economic Operator has the right to lodge a complaint with the Procurement Review Body. At the request of the Procurement Review Body, the Public Procurement Regulatory Commission will continue with the procedures outlined in paragraph 8 of article 25 of the PPL.
   2. Against the Contracting Authority’s decision, the complainant or any concerned party, if any, may lodge, in all cases, a complaint with the PRB in accordance with Article 109 of the PPL.
3. **FILING A COMPLAINT TO THE PRB**

**Article 9**

**Time period for submission of a complaint to the PRB**

9.1 A complaint to the PRB may be submitted only after a preliminary procedure for resolution of the dispute and submitted within ten (10) days **after the decision issued by the contracting authority in the preliminary procedure of dispute resolution** in accordance with Article 108A of the PPL.

9.2 The complaint shall be submitted in original to the Procurement Review Body “PRB” and, simultaneously, a copy of the complaint shall be submitted to the Contracting Authority. Claims should be the same as those presented to the contracting authority.

9.3 In case of withdrawal of complaints lodged, the PRB has the authority to continue on its own behalf and discretion the review of any allegations directly or indirectly made in such a complaint.

**Article 10**

**Basic Contents of a complaint submitted to the PRB**

10.2 The complaint shall contain:

1. the name, the postal address, the electronic address, and contact information of the complainant;
2. the name of the concerned contracting authority;
3. sets forth a reasonably specific description of the concerned procurement activity;
4. attaches a copy of the concerned contract award notice or design contest results notice, if such has been issued or published;
5. demonstrates that the complainant qualifies as an “interested party,” as defined under Section 4 of the present law;
6. describes the factual circumstances constituting or giving rise to the alleged violation;
7. specifies the provision or provisions of the PPL law that is alleged to have been violated;
8. describes how the alleged violation has caused, or threatens to cause, material damage to the complainant in cases where the complainant includes a claim for compensation;
9. attaches a copy of the decision of the contracting authority issued during the preliminary resolution of disputes in accordance with Article 108A; and
10. submits an evidence of payment of the complaint fee, described in Article 118 of this Law.

10.2 If any of the above elements, mentioned under article 10.1, is missing the PRB shall immediately notify the complainant in writing, by the most rapid means possible, of the nature of the deficiencies. If the filing period has expired or will expire in less than four (4) days, the complainant shall have four (4) days after receiving such a notification to correct the deficiencies and to resubmit the complaint. If the filing period has not yet expired and will not expire in less than two (2) days, the complainant may re-submit the complaint any time prior to the expiration of the filing period.

10.3 If the PRB determines that the complaint has been timely filed and meets the requirements in accordance with article 10.1 of these rules, the PRB shall immediately

1. assign to one of its review expert the task of reviewing all allegations contained in the complaint; and
2. establish a review panel to review the allegations alleged in such complaint.

**Article 11**

**Automatic suspension of Procurement Activity**

11.1 Unless and until the concerned review panel makes another determination in writing, **the filing of a complaint shall automatically require the concerned contracting authority to suspend the conduct of the procurement activity to which the complaint relates.**

10.2 Notwithstanding the forgoing, and when required by the contracting authority, the President of the PRB may issue an order removing the automatic suspension, if after taking into account the probable consequences of such suspension for all interests likely to be harmed, including the public interest and the complainant’s interest, the President determines that the negative consequences of such suspension exceed the benefits that may be achieved thereby. Prior to taking any action on the contracting authority’s request, the complainant shall be given an opportunity to submit written arguments to the President as to why the suspension should not be removed. The President will inform the complainant and the contracting authority about the decision.

**Article 12**

**PRB’s Decision**

12.1 In accordance with article 105 of the PPL, in repeated cases of same complaint allegations, where the subject of the dispute and the parties are the same, for cases earlier examined, the chairman of the review panel should treat them as a matter already judged *"res judicata".*

12.2 Contracting authorities, in compliance with Article 115.1 of the PPL, within 15 days from the date of the complaint (calculated as follows: 1 day the for PRB to review the complaint; 10 days for the expert’s assessment; 4 days for the contracting authority to reply to the expert’s assessment), must inform the complainant, the review expert and the review panel, about its decision regarding the matters set forth in the complaint.

12.3 If, in its decision, the contracting authority determines that any or all of the allegations are valid, and the complainant has not objected, the Contracting Authority shall, within 5 days or time allowed by the expert, take corrective action recommended by the expert.

12.4 If, within the time limits specified, the contracting authority fails to issue the required decision or issues a decision that rejects or denies the validity of an allegation or that fails to assess the validity of an allegation, the complaint shall be referred to the review panel.

12.5 If the contracting authority issues a decision determining that an allegation contained in the compliant is valid, but fails to take appropriate and effective corrective action the complainant may then, within three (3) days file a written notice with the review panel and the contracting authority regarding such failure and requesting the review panel to review the matter and to issue an order to the contracting authority requiring such authority to correct an alleged violation and/or to prevent further damage to the complainant and/or another interested party. In this case, the CA shall, within three (3) days, transfer all documents to the review panel.

12.6 The PRB shall issue its final written decision, together with a written statement of the factual and legal bases justifying such decision, and any order required to give effect to such decision.

12.7 A PRB decision to re-evaluate the selection of tenderers or awarding the contract does not imply a change in the initial result.

12.8 The PRB’s decision will be published at PRB’s website, within 5 days in the original language of the decision, and within 15 days with regard to other languages, as well as in English language for all cases related to large value contracts, in PRB’s website [www.oshp.rks-gov.net](http://www.oshp.rks-gov.net).

1. **FILING A COMPLAINT TO THE BASIC COURT**

**Article 13**

**Filing a Complaint to the Basic Court**

13.1 If a complainant believes that a final decision or determination of the PRB is contrary to the facts or the present Law, the complainant may request the Basic Court to review such decision. The request to the Basic Court must be filed within a time limit of thirty (30) days from the publication of the PRB decision.

1. **FEES and PENALTIES**

**Article 14**

**Complains fee**

14.1 In compliance with article 108/A of the PPL, a request for review may be submitted, **free of charge,** by an interested party **at any stage** of any procurement activity and with respect to **any act or omission** of the contracting authority.

14.2 In compliance with article 118 of the PPL, all complainants are required to pay a complaints fee to the PRB.

1. Whenever the complaint relates to the decision of the **award of the contract**, the value of the complaint fee is equal to **one percent (1%) of the value of the offer**, **but not less than 100 Euros and not more than 5,000 Euros.**
2. Whenever the complaint relates to **the contract notices, tender documents**, the value of the complaint fee is equal to **one percent (1%) of the estimated contract value**, **but not less than 100 Euros and not more than 5,000 Euros.**

14.3 The value of the complaint fee is equal to **one percent (1%) of the value of the offer**, **but not less than 100 Euros and not more than 5,000 Euros.** Payment shall be made in cash or cash equivalent into the account established by the PRB.

14.4 The PRB shall dismiss the complaint if it is not accompanied by the fee.

14.5 The fee shall be reimbursed to the complainant whenever PPB approves the complaint as grounded.

14.6 If the review panel determines that all allegations made by the complainant in its complaint are frivolous, the PRB may require the complai­nant to pay an additional penalty of up to **5,000 Euros.** In such event, the complainant shall be ineligible to participate in any manner in a pro­curement activity covered by the present law until:

* 1. such penalty is paid in full; or
  2. a court of competent jurisdiction rescinds the order of the PRB requiring the payment of such penalty.