



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 209 2319

Fax : (00 264 61) 236454

Head Office,
Moltke Street,
Private Bag 13295,
Windhoek

Enquiries: **Kaarina Kashonga**

IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 17 AND 18 AUGUST 2022
IN THE MATTER BETWEEN

Rubicon Security Services CC

AND

Central Procurement Board of Namibia

**Minister of Gender Equality, Poverty Eradication, and
Social Welfare**

Nahole Security and Debt Collection Services CC

Six Thousand Security Services CC

Triple One Investment CC

Nelito Investment CC

Applicant

1st Respondent

Hg

2nd Respondent

3rd Respondent

4th Respondent

5th Respondent

6th Respondent

**IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC
PROCUREMENT ACT, 2015 (ACT NO. 15 OF 2015)**

**BID NO: NCS/OAB/CPBN-03/2022: - PROVISION OF SECURITY SERVICES TO
THE MINISTRY OF GENDER EQUALITY, POVERTY ERADICATION, AND
SOCIAL WELFARE PREMISES IN KHOMAS, OHANGWENA, OMUSATI,
OSHANA, OSHIKOTO, KAVANGO EAST, KAVANGO WEST, OTJOZONDJUPA,
ZAMBEZI, ERONGO, KUNENE, OMAHEKE, HARDAP AND KARAS REGIONS
FOR 36 MONTHS**

**Present: Gilbert Habimana (Chairperson), Tulimeyo Kaapanda, Hellen Amupolo,
Kenandei Tjivikua and Brown Mutrifa.**

Heard: 17 August 2022

Decided: 18 August 2022

REVIEW PANEL ORDER

A hybrid hearing was held, using physical and virtual modes.

Having heard **Mr. Stoan Horn**, for the Applicant, **Mrs. Nocola Davids**, for the 1st Respondent, and other interested parties who were joint in terms of sub-regulation 42(5)(a) of the Regulations (hereinafter referred to as "the Regulations") to the Public Procurement Act, 2015 (Act No. 15 of 2015) (hereinafter referred to as "the Public Procurement Act"); and Having read the applications for review and other documents filed as part of the record, the Review Panel made the following findings and subsequent order hereunder towards the end.

1. APPLICANT'S GROUNDS FOR REVIEW

1.1 The Applicant claimed that in terms of Section 52 (9) of the Public Procurement Act, the examination and evaluation of bids must be done according to the criteria and methodology set out in the bidding documents and the evaluated costs of each bid are compared with the evaluated costs of other bids to determine the most economically advantageous bid. It submitted that the evaluation of any bid must comply with all the statutory provisions applicable to the specific service to be rendered, in this case security services. Hf

1.2 In the premise, it cannot be said that the 1st Respondent accepted the lowest evaluated substantially responsive bid for lots number 1, 2, 4, and 5 as those aforementioned bids do not meet the minimum statutory requirements for the remuneration of the security officers.

1.3 The Applicant asked that the decision to award a bid to Third, Fourth, and Sixth Respondents for lots number 1, 2, 4, and 5, respectively be set aside in accordance with Section 60 (d) of the Public Procurement Act, 15 of 2015 and that the Review Panel order that lots number 1, 2, 4 and 5 be allocated to the Applicant (Rubicon Security Services CC).

2. APPLICANT DURING THE PROCEEDINGS

2.1 The Applicant alleged that the prices quoted for lots number 1, 2, 4, and 5 do not comply with minimum wage requirements as per the applicable legislation. When a potential bidder submits a tender for the amount to be charged for the security guard, certain compulsory statutory costs need to be included such as free uniform, payment for Employee Compensation Fund, and employer's portion to Social Security and Vocational Educational levy.

2.2 The Applicant stated that the Review Panel should consider ITB 14.3 on page 11 of the bidding documents which reads as follow: *"All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of bids, shall be included in the total Bid price submitted by the bidder"*. This is a direct instruction to all bidders to comply with the requirement.

2.3 The Applicant further stated that it would have not applied if it was not for statutory requirement and that the 1st Respondent cannot award a tender knowingly that the statutory requirements are not considered. The Applicant further referred the Review Panel to ITB3.1 on page 3 of the bidding documents which reads as follows: *"The Government of the Republic of Namibia requires that bidders/suppliers/contractors, participating in procurement in Namibia, observe the highest standard of ethics during the procurement process and execution of contracts"*.

2.4 Further, the Applicant claimed that, as per Annexure C attached to the review application, the selected bidders for lots number 1, 2, 4, and 5 will either not make a profit or will not pay their Security Officers the statutorily required minimum amount.

3. THE 1ST RESPONDENT'S RESPONSE ON THE APPLICATION

3.1 The 1st Respondent first referred the Review Panel to the objects of the Public Procurement Act, 15 of 2015, and argued that according to ITB 14.3 when a bidder gives its price, it is the 1st Respondent's understanding that the bidder has considered all statutory requirements. Hf

3.2 The 1st Respondent stated that ITB13.1 (f) requires bidders to submit a mandatory undertaking that the salaries and wages payable to personnel are compliant with Section 138 (2) of the Labour Act, 11 of 2007 and Section 50 (2) (d) of the Public Procurement Act. It is for this reason that all bids were evaluated in accordance with Section 52 (9) and Section 55 (1) of the Public Procurement Act.

3.3 The First Respondent further indicated that in terms of ITB 5.3 (vii) and ITB 5.5 (c) bidders are obliged, amongst others, to include a declaration that employees will be provided with essential security service tools and equipment, which include a full security uniform per guard. The purported minimum total cost-to-company for each guard of N\$2,222.73 is a minimum rate conjured by the Applicant which voluntarily subscribes to this rate and is by no means a mandatory rate for all bidders and the Applicant, nor the 1st Respondent, is in a position to prescribe to bidders what the total cost-to-company for guards must be.

3.4 The 1st Respondent further submitted that all the selected bidders met the requirements set out in the bidding documents in accordance with Section 52 (9) of the Public Procurement Act.

4. FINDINGS OF THE PUBLIC PROCUREMENT REVIEW PANEL

From the documents presented to the Review Panel and the review hearing proceedings, the following findings are deduced:

4.1 That as per ITB 13.1 (f) (6), the public entity has not translated all the price components of minimum statutory requirements into monetary terms. However, it has evaluated bidders based on their set criteria.

4.2 That there was no monetary threshold set by the 1st Respondent, consequently the 1st Respondent's Bid Evaluation Committee could not confirm if selected bidders' prices were higher or lower than a monetary threshold.

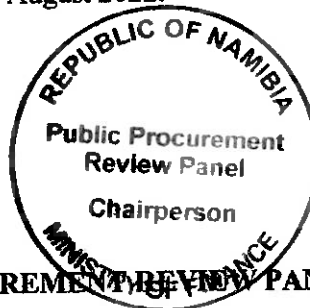
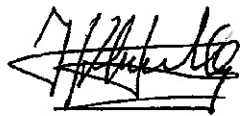
4.3 That, all selected bidders' price offers can cover all the statutory required costs, based on the Panel verifications.

5. DECISION OF THE PUBLIC PROCUREMENT REVIEW PANEL

Based on the above findings, the Review Panel makes the following order:

4.1 In terms of Section 60(a) and (e) of the Public Procurement Act, 2015 (Act No. 15 of 2015), the Review Panel hereby dismisses the application and confirms the decision of the Board.

4.2 That this Order is effective from 18 August 2022.



Gilbert Habimana

CHAIRPERSON: PUBLIC PROCUREMENT REVIEW PANEL (i.r.o. this matter)