



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW HEARING

HELD ON 26 SEPTEMBER 2022

IN THE MATTER BETWEEN

NAHOLE SECURITY & DEBT COLLECTIONS SERVICES CC

APPLICANT

AND

ERONGO REGIONAL COUNCIL
FANTOS INVESTMENT CC
NGATUKONDE TRADING CC
CHIEF NANGOLO SECURITY SERVICES CC
OMEYA INVESTMENT CC
OMAMBUDU SECURITY SERVICES CC
RUBICON SECURITY CC
CHIPPA TRADING ENTERPRISES CC
SKY HIGH TRADING ENTERPRISE CC
SHIKUVULE TRADING CC
NAMIBIA PROTECTION SERVICES CC
SIX THOUSAND SECURITY CC
ANANIAS SANIB TORA INVESTMENT CC

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT
8TH RESPONDENT
9TH RESPONDENT
10TH RESPONDENT
11TH RESPONDENT
12TH RESPONDENT
13TH RESPONDENT

AFRICAN KING SECURITY SERVICES CC	14TH RESPONDENT
SIRKA INVESTMENT CC	15TH RESPONDENT
OMATUNGO SECURITY SERVICES	16TH RESPONDENT
M. ANGUKU TRADING CC	17TH RESPONDENT
SECURITY TRAINING COLLEGE OF NAMIBIA	18TH RESPONDENT
TRIPLE INVESTMENT CC	19TH RESPONDENT
EASS INVESTMENT CC	20TH RESPONDENT
WINDHOEK SECURITY SERVICES CC	21ST RESPONDENT
PIS SECURITY SERVICES CC	22ND RESPONDENT
MGEE'S INVESTMENT CC	23RD RESPONDENT
MOTO TRADING & SERVICES CC	24TH RESPONDENT
KIMPERT INVESTMENTS CC	25TH RESPONDENT
OMBALA SECURITY SERVICES CC	26TH RESPONDENT
AMON SN INVESTMENTS CC	27TH RESPONDENT
WEST VALLEY ARMED RESPONSE CC	28TH RESPONDENT
TIKHOES TRADING ENTERPRISES CC	29TH RESPONDENT
NELITO INVESTMENT CC	30TH RESPONDENT
ELITJISOLA TRADING ENTERPRISE CC	31ST RESPONDENT
MAYFIELD PROTECTION SERVICES CC	32ND RESPONDENT
HOLDEM INVESTMENTS CC	33RD RESPONDENT
TSARAS TRADING CC	34TH RESPONDENT

IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC PROCUREMENT ACT, 2015 (ACT 15 OF 2015)

BID NO: NSC/ONB/ERC-001/2022/2023: PROVISION OF SECURITY SERVICES AT ERONGO REGIONAL COUNCIL HEAD OFFICE, CONSTITUENCY, AND SETTLEMENT OFFICES

Present: Kenandei Tjivikua (Chairperson), with Selma-Penna Utonih, Mekondjo Katunga, Paulina Kandali Iyambo, and Lukas Kudumo Siremo, concurring.

Heard: 26 September 2022

Decided: 26 September 2022

REVIEW PANEL ORDER

The meeting took place using both physical and virtual modes.

Having heard Mr. Sem Nuukonga Shilimela, representing the Applicant, Ms. S. K. Kauari, representing the First Respondent, and other interested parties who were joined physically and virtually in terms of Regulation 42(5)(a) of the Public Procurement Regulations: Public Procurement Act, 2015 (hereinafter referred to as the “Regulations”); and

Having read the application for review in terms of Section 59(1) of the Public Procurement Act, 2015 (Act No. 15 of 2015) (hereinafter referred to as the “Public Procurement Act”), read with Regulation 42 and other documents filed as part of the records, the Public Procurement Review Panel made the following findings and subsequently, made the following order towards the end:

1. BACKGROUND TO THE REVIEW APPLICATION

1.1 The Applicant stated that they received the notice for selection of award on 8 September 2022 and requested the First Respondent to provide reasons for their disqualification in terms of Section 57 of the Public Procurement Act. The Applicant further stated that their bid was the most substantial responsive bid and they have provided the lowest rate compared to the selected bidder.

2. APPLICANT’S GROUNDS FOR REVIEW

2.1 The Applicant alleged that they received the notice of selection of award on 8 September 2022 and requested the First Respondent to provide reasons for disqualification in terms of Section 57 of the Public Procurement Act however the First Respondent did not provide the reasons for disqualification.

2.2 The Applicant further claimed its bid was the most substantial responsive bid and it had provided the lowest rate compared to the selected bidder and that the Applicant’s total bid amount was N\$4,221,201.60 while that of the selected bidder was N\$4,229,729.28

2.3 When the Review Panel informed the Applicant that the reasons for disqualification were based on the bidding data sheet referenced to ITB 13.1(g)(4) and that the Applicant did not

provide proof of the company code of discipline and grievance, the Applicant claimed that it did include the company code of discipline and grievances in its bid document.

2.4 The Applicant further argued that it met the requirements that it was the lowest substantial bidder and that the Review Panel must order the First Respondent to re-evaluate its bid.

3. FIRST RESPONDENT'S RESPONSE TO THE APPLICANT'S GROUNDS

3.1 The First Respondent alleged that on Tuesday, 13th of September 2022 it received an email from the Applicant notifying the First Respondent to provide reasons for the Applicant's disqualification and the email stated as "*kindly receive the attached for your attention*" with one attachment and the attachment only had "*Notice to bidder not selected for award*" that was written by the First Respondent.

3.2 The First Respondent claimed that the following day, Wednesday, 14th of September 2022, the Applicant sent another email notifying the First Respondent that they filed an application to the Review Panel Secretariat and pointed out that they received the notice of selection of award and request the First Respondent to provide reasons for disqualification in terms of Section 57 of the Public Procurement Act. According to the Applicant, they were the most substantial responsive bid at the lowest rate to the selected bidder.

3.3 The First Respondent further claimed that it did not receive a letter of complaint from the Applicant as it has been alleged.

3.4 The First Respondent argued that the initial executive summary that was uploaded was incorrect and this was noticed after verification based on the application for review from the Applicant. The First Respondent further argued that although the Applicant's disqualification reasons were not clearly stated in the initial executive summary, such information has been provided in the Bid Evaluation Report of the Bid Evaluation Committee (BEC).

3.5 The First Respondent argued that the Applicant was disqualified due to the following reasons: in terms of ITB 13.1(g)(4), on page 28 of the bidding document contained under the Bidding Data Sheets (BDS), the Applicant did not provide proof of the company code of discipline and grievances and proof of control centres/ office premises physical address, and fitness certificates from towns services are to be rendered within Erongo Region, and such documentation were mandatory.

4. FINDINGS OF THE REVIEW PANEL

The Review Panel found that:

4.1 In terms of Regulation 42(3) the First Respondent was served with copies of the review application on 14 September 2022 by the Applicant via email on which a certain Ms. M. Michael the First Respondent confirm receipt.

4.2 The notice for selection of award was less than 7 days as it was issued on 8 September 2022 and ended on 14 September 2022.

4.3 On page 28 of the bidding document under the bidding data sheets (BDS), a reference to ITB 13.1(g) was used and requested that additional documents be submitted. Based on ITB 132.1(g) and as stipulated in the BDS, these additional documents were not part of the mandatory

requirements which leads to automatic disqualification, but these additional documents were necessary to be used for technical scoring under Section III of the evaluation criteria found on page 31 of the bidding document.

- 4.4 That according to the First Respondent, it did not find any document submission with regards to proof of the company code of discipline and grievances as per ITB13.1(g)(4) and Proof of Control Centres/ Office premises physical address, and fitness certificates from towns services are to be rendered within the Erongo Region as per ITB13.1(g)(7) as indicated in the BDS. The same documents were to be scored 10 points each in the technical evaluation and it was found that the Applicant lost 20 marks out of 100 under the technical evaluation and then obtained 80 marks to proceed to the financial evaluation.
- 4.5 It is found that the Applicant did provide a company code of discipline and grievances which the First Respondent overlooked and considered to be inadequate. However, the First Respondent did not specify anything about the nature and the content thereof of how such a code of discipline and grievances should be. Regarding the Centres/Office premises' physical address, and fitness certificates to be from the Erongo Region, it was found that the Applicant did not provide the same, but provided a fitness certificate from the Outapi Town Council.
- 4.6 Therefore, the First Respondent's executive summary was erroneous in that it specified that the Applicant was disqualified for not having submitted the proof of the company code of discipline and grievances as per ITB13.1(g)(4) and the Proof of Control Centres/Office premises physical address, and fitness certificates from towns services are to be rendered within the Erongo Region as per ITB13.1(g)(7). This requirement was only for scoring the technical evaluation of which the Applicant scored 80 points and the minimum pass mark was set out at 50 points.
- 4.7 That the Bid Evaluation Committee (BEC) report indicated that the Applicant was responsive in all stages, including the mandatory, technical evaluation, and financial evaluation. However, during the recommendation stage for a successful bidder, the BEC used the documents not submitted at the technical evaluation stage, under which the Applicant was penalised and lost 20 marks or points and made such documentation a disqualification factor. It was found that the action of the BEC violated Section 52(9) of the Public Procurement Act.

5. DECISION OF THE REVIEW PANEL

In the premise, the Review Panel makes the following Order:

- 5.1 That the First Respondent's notice for selection of award in respect of bid number NCS/ONB.ERC-001/2022/2023 and/or any decision or action incidental thereto not in compliance with the Public Procurement Act, is set aside in whole in terms of Section 60(c) of the Public Procurement Act, 2015 (Act No. 15 of 2015) with the following instructions.
 - (a) *That the First Respondent is hereby instructed to correct its decision and action to re-evaluate all bids including the Applicant in terms of Section 52(9) of the Public Procurement Act.*
- 5.2 That the effective date of this Order is 26 September 2022.



~~KENANDERT JAVULA~~
CHAIRPERSON: REVIEW PANEL (I.R.O. THIS MATTER)