



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW

HELD ON 01 FEBRUARY 2023

IN THE MATTER BETWEEN

Dabasen Investments CC

AND

||Karas Regional Council

The Applicant

The Respondent

The interested parties, who participated in the hearing, were as listed below:

Mono Mining & Construction

Nelito Investment CC

Hui Tani Trading Enterprises

Namibia Protection Services

Ou Khoes Security Protection CC

Nahole Security and Debt Collection

Shikuvule Trading CC

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

**BID NO: NCS/ONB/DoEAC/||KRC-06/2022/2023 KALAHARI CIRCUIT LOT 2 -
PROVISION OF SECURITY SERVICES FOR DIRECTORATE OF EDUCATION,
ARTS AND CULTURE IN THE ||KARAS REGIONAL COUNCIL FOR THE PERIOD
OF THREE (3) YEARS**

**Present: Ehrenfried Honga (Chairperson), Tulimeyo Kaapanda, Mekondjo Katunga,
Michael Gaweseb concurring and with Fillemon-Wise Immanuel dissenting from the
majority.**

Heard: 01 February 2023

Decided: 01 February 2023

REVIEW PANEL ORDER

A hybrid meeting was held physical and virtual attendance.

Having heard **Mr. Llewellyn Majiedt**, for the Applicant, **Mr. Benedictus Diergaardt**, for the First Respondent and other interested parties who were joint in terms of sub regulation 42(5)(a) of the Public Procurement Regulations (hereinafter referred to as the Regulations) to the Public Procurement Act (Act No. 15 of 2015) (hereinafter referred to as the 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.

1. GROUND(S) FOR REVIEW

- 1.1 The Applicant's bid was unsuccessful allegedly for failure of submitting certified copies of both the owner's ID and Drivers Licence as well as not having minimum work experience required in terms of the bidding document.
- 1.2 The Applicant insists that the bid submission form was completed in the bidding document, signed, and sealed with the company stamp.
- 1.3 The Applicant further indicated that Dabasen Investment CC is currently responsible for the provision of security to the Directorate of Education, Arts and Culture, ||Karas Regional Council in the Kalahari and Namib Circuit for the past two years.

2. SUBMISSION BY THE PARTIES

THE APPLICANT

- 2.1 The Applicant stated that the Bid Submission letter was completed and was in the bidding document, signed and stamp with the company stamp.
- 2.2 The Applicant submitted that it had submitted a certified copies of both owner's ID and Driver's License.
- 2.3 It was further stated by the Applicant that the assertion that Dabasen Investment cc does not have the required years of experience is untenable, because the Company is the holder of the current contract to which the procurement concerned herein is related.
- 2.4 The Applicant alleged that its bidding document was tempered with due to personal vendettas and further informed the Review Panel that the bidding document were not stored in secured safe places, which makes it easily accessible to everyone.
- 2.5 The Applicant prayer is that the bid be cancelled and start afresh.

THE RESPONDENT

- 2.6 The Respondent stated that unfounded allegations that were made against the internal procurement structures, by the Applicant, such as the tempering of documents, inconsistencies and personal vendettas are irresponsible and dangerous. The Respondent appealed to the Review Panel to warn the Applicant to refrain from such untrue allegations.
- 2.7 The Respondent stated that during the bid opening session all the boxes were sealed (in the presence of the bidders attending the opening session) and were stored in the storeroom. The sealed boxes were then handed over, in the presence of the Bid Evaluation Committee (BEC) members, to their chairperson.
- 2.8 The Respondent stated that according to the evaluation criteria, on page 28, ITB 13.1 (g) number 8 of the bidding document, the certified copy of Identification document of the founding member was not attached. The Applicant only submitted the certified copies during the stage for reconsideration, post the bid closure.
- 2.9 The Respondent stated that the Applicant's bid did not comply with the instructions on page 34 of the Bid Submission Form and was therefore disqualified and could not be considered for further evaluation.
- 2.10 The Respondent acknowledged that discrepancies were detected on pages 28, ITB 13.1(g) number 6 and 27, ITB 5.5 (a) 4.2, page 9 of the bidding document regarding the required years of experience, with one stating that a bidder should at least have two (2) years of experience in Security Services, while another requiring (four) 4 years of experience. Thus, the Applicant was not disqualified on that basis, but based on other grounds.

3. FINDINGS OF THE REVIEW PANEL

From the documents presented to the Review Panel and the review proceedings the following findings are deduced.

- 3.1 The Review Panel observed that the Applicant quoted the wrong bid reference number: NCS/ONB//KRC-03/2022/2023 when applying for reconsideration. Instead, the correct reference number should have been NCS/ONB/DoEAC//KRC-06/2022/2023. This issue was corrected before the hearing took place.
- 3.2 The Review Panel found that the Bid Submission Form submitted by the successful bidder (Mono Mining & Construction) appears with the letterhead of Mono Security Services, however, there is no company by the name of Mono Security Services in existence as per BIPA database.
- 3.3 The failure to submit bids on a company letter head was used as a disqualifying criterion for companies like Dabasen Investment CC (the Applicant), Six Thousand Security Services, Ulie's Trading Enterprises cc, Denacle Investment CC, Nelito Investments cc, Namibia Protection Services, Ou Khoes Security Protection cc, Nahole Security Services, Shikuvele Trading cc and Brownie Security Services. It is thus not logical for Mono Mining & Construction to be deemed responsive, when there is no bid submission application form that exists.
- 3.4 The Review Panel observed that the public entity contravened Regulation 7(2) when its BEC failed to commence with the process of examination and evaluation of the bids in accordance with Section 52 of the Act within Five (5) days after the opening of bids. The bid closed on the 28 of October 2022, however, the BEC was only constituted on the 15 November 2022 (13 days after the Bid Closing date).
- 3.5 The Review Panel also found ambiguity between ITB 5.5 (a) and 13.1 (g), 6: both have something to do with experience in the security industry. The Respondent clarified this by explaining that the evaluation opted to use years of experience of 2 years instead of 4 years. The lack of four years' experience was listed, in the BEC Executive Summary, as disqualifying criteria for both the Applicant and MKS Construction cc.
- 3.6 The Review Panel further observed that the Applicant contravened Section 59, read with Regulation 42 (3), as they did not serve copies of the review application to the public entity and or any other interested parties.
- 3.7 Another contravention was that the Applicant did not file its application with a founding affidavit. As such, one of the panel members advised that the application by Dabasen Investment cc should therefore not stand. To support this point, the member pointed to a recent ruling of the Namibia High Court of Paragon vs Review Panel Chair issued on the 23rd June 2022 (paragraph 21) which reads "It is, furthermore, clear as day, that a review application is one accompanied by a founding affidavit to place evidence before the Review Panel, and it must be lodged with the Review Panel. That is exactly the reason why other bidders, or any interested person is required to file a "replying affidavit" as contemplated in regulation 42(4) of the Public Procurement Regulations in answer to the averments contained in the founding affidavit."

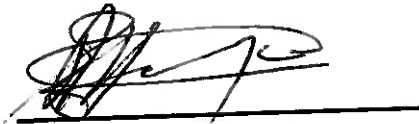
3.8 Other members pointed to the fact that the Act, under section 59 read with regulation 42, does not provide for such a format (as stated in 3.7 above). As a matter of fact, there is a format provided for by the Procurement Policy Unit (Annexure 1) which serves as the standard application form. As such, the majority ruled that the application must stand, especially given the gross errors reflected within the procurement process.

4. DECISION OF THE REVIEW PANEL

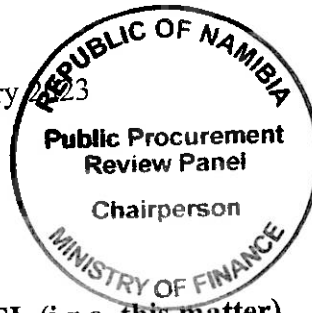
Based on the above the Review Panel hereby makes the following order:

4.1 In terms of Section 60(f) of the Public Procurement Act, 2015 (Act No. 15 of 2015), the Review Panel hereby order that the procurement proceedings be terminated and start afresh.

4.2 This Order is effective 01 February 2023



EHRENFRIED HONGA
CHAIRPERSON: REVIEW PANEL (i.r.o. this matter)



RP/01

REPUBLIC OF NAMIBIA

REVIEW PANEL

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (Public Entity)

Application for review of the decision of the (Name of the Public Entity) of.....dated theday of20.....in the matter of bid reference no.....of20.....

APPLICATION FOR REVIEW

I/Wethe above named Applicant(s) of address: Physical address.....Fax No.....Tel. No.....Email.....hereby request the Review Panel to review the whole/part of the above mentioned decision on the following grounds, namely:

- 1.
2. etc.

By this memorandum, the Applicant requests the Panel for order/orders that: -

- 1.
2. e.t.c.

SIGNED

Applicant

Dated on.....day of20...

FOR OFFICIAL USE ONLY

Lodged at Review Panel on.....day of... 20.....

SIGNED.....

Secretary
Review Panel