



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 17 AUGUST 2023**

IN THE MATTER BETWEEN

**NELITO INVESTMENT CC
SIX THOUSAND SECURITY SERVICES**

**FIRST APPLICANT
SECOND APPLICANT**

AND

MUNICIPALITY OF OKAHANDJA

FIRST RESPONDENT

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

BID NO: NCS/ONB/OKHMU-02/2023 – PROVISION OF SECURITY SERVICES

Coram: Selma-Penna Utonih (Chairperson), with Brownny Mutrifa, Paulina
Kandali Iyambo, Tulimeyo Kaapanda and Gilbert Habimana.

Heard: 17 August 2023

Decided: 17 August 2023

ORDER

1. INTRODUCTION

1.1 A hybrid meeting was held, using both physical and virtual modes.

1.2 Having heard **Mr. Bencious Kahirimana**, for the First Applicant, **Mr. Olsen Kahiriri**, for the Second Applicant, **Mr. Alfons Tjitombo** for the 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, 2015 (Act No. 15 of 2015) (hereinafter referred to as “the Act”) and;

Having read the application 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.

**2. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICANTS’
APPLICATIONS FOR REVIEW**

1. The First Applicant (Nelito Investment CC) stated that before the submission of its bid to the Municipality of Okahandja it has noticed that a price activity schedule was missing from its bid document. The Applicant then conducted the Municipality of Okahandja via telephone as well as through an email, drawing their attention to the missing price activity schedule.
2. The First Applicant further submitted that its effort went in vain as it could not get any reply from the public entity. Therefore, the First Applicant created its own table/price activity schedule and included it in the bidding document submitted on the closing date, before the closing time as specified in the bidding document.
3. The Second Applicant (Six Thousand Security Services CC) stated that it met all the criteria set out in the bid document and are also the lowest evaluated substantially responsive bid.

3. POINTS IN LIMINE

3.1 At the commencement of the review proceedings, the Chairperson requested the Parties to raise any point in *limine* that they may have before the merits of the matter are heard. Further to this the panel asked the public entity to enlighten the Review Panel whether the bid in question is still valid. The Public entity did not understand the question, it therefore, requested the Panel to explain what it means by "bid validity period". Following the Review Panel's briefly explanation of the meaning of bid validity period, the First Respondent indicated that it needs a 5 minutes break for consultation and also to peruse through the documents. The First Respondent after the consultation, it informed the Review Panel that the bid number: NCS/ONB/OKHMU-02/2023 for the provision of Security Services is not valid and further indicated that this bid expired on 24th July 2023.

4. FINDINGS OF THE REVIEW PANEL

Having heard the First Respondent at the Review Panel Hearing and having considered the written submissions of the Parties, the Review Panel made the following finding:

4.1 The First Respondent acted contrary to Section 49 (2) of the Public Procurement Act 15 of 2015.

4.2 Notwithstanding the foresaid observation, the Review Panel found that the Applications for Review herein relates to a bid that has lapsed because it had no bid validity extension certificate following:


- I. That the tender has exceeded its bid validity period in terms of Section 49(1) and the First Respondent's failure to extend the period by acquiring an agreement with the bidders concern.
- II. That in terms of section 49 (1) & (2) of the Public Procurement Act, 2015 (Act No 15 of 2015). Regard had hereto; the bid is therefore invalid *ex lege*.

5. DECISIONS OF THE REVIEW PANEL

Based on the above, the Review Panel orders the following:

- 5.1 That the BID NO: NCS/ONB/OKHMU-02/2023 - Provision of Security Services, is non-existent by operation of law, so does any decision that was made outside the bid validity period, in the absence of any extension.
- 5.2 The Public Entity is hereby ordered to start the procurement process afresh in terms of Section 60 (f)
- 5.3 The effective date of this order is 17 August 2023.

5.4 The First Respondent shall provide proof of implementation of this Order to the Procurement Policy Unit within thirty (30) days from receipt date of this order. A copy of the proof should be sent to the Review Panel Secretariat.



SELMA-PENNA UTONIH
CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)

