



**REPUBLIC OF NAMIBIA**

**MINISTRY OF FINANCE AND PUBLIC ENTERPRISES**

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**PUBLIC PROCUREMENT REVIEW PANEL**

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING  
HELD ON 8 DECEMBER 2023**

**IN THE MATTER BETWEEN**

**MENDOZER INVESTMENT CC**

**APPLICANT**

**AND**

**OUTAPI TOWN COUNCIL**

**1<sup>st</sup> RESPONDENT & OTHERS**

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

**BID NO: W/RFQ/OUTC-04/2023/24 – MAINTENANCE OF ROADS (GRAVEL AND  
BITUMEN) IN OUTAPI**

**Coram:** Doné Brinkman (Chairperson), with Ehrenfried Honga, Lukas Kudumo  
Siremo, Selma-Penna Utonih and Gilbert Habimana.

**Heard:** 08 December 2023

**Decided:** 08 December 2023

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**ORDER**

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**1. INTRODUCTION:**

- 1.1 A hybrid meeting was held, using both physical and virtual modes.
- 1.2 Having heard **Mr. Eino Nangolo**, for the Applicant, **Mr. Pieter Jan Greyling**, 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 APPLICATION AS CONTAINED IN THE  
APPLICANT’S APPLICATION FOR REVIEW:**

- 2.1 The Applicant, in its Application for review alleges that it has been unfairly and unreasonably disqualified by the First Respondent, for submitting a wrong company statement in its bidding document at the quotations closing date.
- 2.2 The Applicant highlights that it provided a correct founding statement attached to its original bidding document it submitted at the quotation submission closing date without making any copies and for that reason, Applicant is not in the possession of the submitted bid.

- 2.3 The Applicant further contends that the First Respondent failed to attach the said incorrect founding statement to its letter dated 13 November 2023, in response to the Applicant's request for reconsideration sent to the Respondent in terms of section 55 (4B) of the Act as amended.
- 2.4 The Applicant further stated that they were unfairly and unreasonably declared non-responsive by the First Respondent which failed to provide the necessary proof that the Applicant submitted an invalid company registration document.
- 2.5 The Applicant advised the First Respondent to provide proof that the Applicant submitted the incorrect company registration documents, and that the disqualification of the Applicant was indeed fair and procedural.

**3. APPLICANT'S ORAL SUBMISSIONS AT THE REVIEW PANEL HEARING:**

- 3.1 The Applicant explained that it wholly disputes the decision of the First Respondent on the basis that an incorrect founding statement was attached to the Applicant's bidding documents. The Applicant highlighted that it provided the correct founding statement for the purpose of this bidding process.
- 3.2 Further, the Applicant submitted that an Administrative body, must act competently and ethically and cannot make decisions without proper consideration of the principles of legality, honesty and integrity. The Applicant alleges that the First Respondent did not properly consider and prove how the Applicant submitted the incorrect founding statement during the bidding process. The Applicant thus argued that the First Respondent was careless to disqualify a bidder that met the requirements specified in the bidding document.
- 3.3 The Applicant further alleged that the First Respondent tampered with its bidding document by removing the Applicant's founding statement and inserted the wrong founding statement. Upon inquiry by the Review Panel, the Applicant submitted that both companies (Mendozer Investments CC) and Woodpeckers Technology Solution CC (whose founding statements is attached to Mendozer Investments CC's quotation submitted at the closing date of quotations submission,) are owned by Johannes Mandume Negumbo Negumbo.

**Relief sought by the Applicant:**

The Applicant requested that the Review Panel review and set aside the decision of the First Respondent, re-evaluate the quotations and make a new decision.

**4. 1<sup>st</sup> RESPONDENT'S ORAL SUBMISSION AT THE REVIEW PANEL HEARING:**

- 4.1 The 1<sup>st</sup> Respondent submitted that the application for review of the Applicant, is not properly before the Review Panel because the Applicant failed to exhaust all available remedies before lodging the application for review with the Review Panel. The First Respondent argued that Section 55 (4D) requires that a bidder who is aggrieved by a decision or action of the public entity must exhaust remedies under this section before applying for review under section 59 (1) of the Act. Therefore, the application must be disregarded.
- 4.2 The 1<sup>st</sup> Respondent further denied the allegations by the Applicant that it refused to send the Applicant's copy of the bidding document as requested by the Applicant and further stated that the Applicant had an opportunity to go to Outapi Regional Council and peruse through its bidding document.
- 4.3 The Respondent stated that the Applicant has made serious allegation that the First Respondent tampered with its quotation submitted at the quotations submission closing date. The First Respondent denied this allegation and informed the Review Panel that the company document submitted by the Applicant was that of Woodpeckers Technology Solution CC.

## **5. FINDINGS OF THE REVIEW PANEL**

Having heard the Parties at the Review Panel Hearing, having viewed the bidding documents and having considered the written submissions of the Parties, the Review Panel made the following findings:



- 5.1 That, after perusing the original bidding document of Mendozer Investments CC during the review hearing proceedings and handing it over to the Applicant for self-verification, Applicant attached to its quotation the following documents:
- a) The business registration founding statement of Woodpeckers Technology Solution CC
  - b) A proof from the Employment Equity Commissioner that the bidder or supplier is not a relevant employer issued to Woodpeckers Technology Solution CC.
- 5.2 That the documents cited under a) and b) are mandatory requirements and leads to an outright disqualification if the company bidding them do not supply the documents of the company bidding.
- 5.3 That, regarding the possibility of tampering with the Applicant's submitted quotation as alleged by Applicant during the hearing proceedings, the Review Panel weighed the probability for that to happen and found that the balance of possibilities was in favour of the First Respondent.
- 5.4 The Review Panel did not find any evidence of fraudulent activity or tampering on the part of the First Respondent.

7. **DECISIONS OF THE REVIEW PANEL:**

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

In terms of Section 60 (a) of the Act, the Review Panel dismisses the application and confirms the decision of the public entity in terms of section 60 (e) of the Act.

8. The Public Entity 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.

MINISTRY OF FINANCE  
Chairperson  
Public Procurement  
Review Panel  
REPUBLIC OF NAMIBIA

**Doné Brinkman**  
**CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)**