



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 209 9016

Fax : (00 264 61) 236454

Telex: 908-3369

Head Office,

Moltke Street,

Private Bag 13295,

Windhoek

Enquiries: **Kaarina Kashonga**

**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 12 MARCH 2024**

IN THE MATTER BETWEEN

MAYFIELD PROTECTION SERVICES

APPLICANT

AND

**KHOMAS REGIONAL COUNCIL
& OTHERS**

1st RESPONDENT

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

BID NO: NCS/ONB/KRC-01/2023/2024 – RENDERING OF SECURITY SERVICES TO KHOMAS REGIONAL COUNCIL FOR A PERIOD OF 36 MONTHS

Coram: Ehrenfried Honga (Chairperson), with Selma Penna Utonih, Hellen Amupolo, Fillemon Wise Immanuel and Lukas Kudumo Siremo.

Heard: 12 March 2024

Decided: 12 March 2024

ORDER

1. INTRODUCTION

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

1.2 Having heard **Mr. Erastus Amunyela** for the Applicant, **Mr. Hafeni Amunyela** 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, 2015 (Act No. 15 of 2015) as amended (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.

3. GROUNDS FOR THE REVIEW AS CONTAINED IN THE REVIEW APPLICATION

3.1 The Applicant in its application for review informed the Review Panel that the 1st Respondent is an administrative body as described in Article 18 of the Constitution of the Republic of Namibia and is expected to act fair at all times. The Applicant further submitted that taking an adverse decision without informing the selected bidders as to why the such a decision was taken cannot be construed to be fair and or just.

3.2 The Applicant submitted further that the fact that bidders who applied for a reconsideration failed to inform the Applicant is worrisome. The Applicant refers the

Review Panel to a similar matter of Mopani Trading cc v Ohangwena Regional Council held on 20 July 2023 in which the Review Panel correctly declared the cancellation issued by the 1st Respondent ultra vires and directed the 1st Respondent to comply with the Act.

4. APPLICANT'S SUBMISSIONS AT THE REVIEW PANEL HEARING

4.1 The Applicant explained that the First Respondent violated Regulation 42 (4) of the public Procurement Regulations in that it failed to reply to the allegations/ grounds raised by the Applicant in its application for review. The Applicant submitted that when its company selected for award in January 2024, four (4) bidders applied for reconsideration however, they did not serve their Applications on the Applicant. The Applicant further quoted Regulation 42 (3) which reads as follow: "*the Supplier or bidder must lodge the review application with the Review Panel and serve copies of the review application on a public entity referred to in subregulation (1) and on any other interested parties*".

4.2 Upon inquiry by the Review Panel, whether Regulation 42 (3) deals with an application for reconsideration and if there is a provision in the Act that compels a bidder who is applying for the reconsideration to serve a copy on any other interested parties, the Applicant failed to prove to the Review Panel as to which provision of the Act requires that the application for reconsideration must be served on other interested parties. The Review Panel explained to the Applicant the difference between Section 59 (1) read in conjunction with Regulation 42 (3) which deals with an application for review and Section 55 (4A) of the Act as amended which deals with an application for reconsideration.

5. RELIEF SOUGHT BY THE APPLICANT:

5.1 The Applicant requested that the reconsideration filed by the four (4) Applicants be declared invalid and not in accordance with procedure, and that the cancellation dated 19 February 2024 be declared ultra vires in terms of section 60 (c) of the Public Procurement Act.

6. FIRST RESPONDENT'S SUBMISSION AT THE REVIEW PANEL HEARING:

5.1 The First Respondent submitted that the application is premature on the basis that the outcome of the reconsideration was not yet given to the bidders. The Applicant further indicated that it is unfortunate that the Public Procurement and regulations did not make provision for the application for reconsideration to be served on other interested parties.

7. FINDINGS OF THE REVIEW PANEL

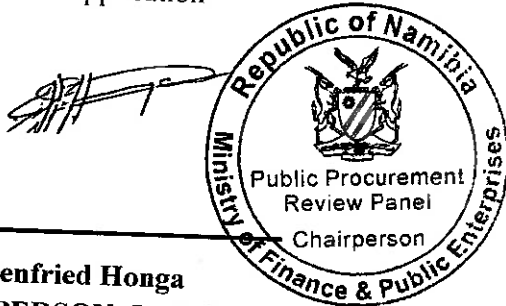
Having heard the Parties at the Review Panel Hearing and having considered the written submissions of the Parties, the Review Panel made the following findings:

7.1 That, the Applicant is aggrieved by the fact that it was not served with the application for reconsiderations which were filed by four (4) bidders, however, the Act did not make provision for bidders to serve the application for reconsideration on other bidders.

8. DECISIONS OF THE REVIEW PANEL:

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

8.1 That, in terms of Section 60(a) of the Public Procurement Act the Review Panel dismisses the application



Mr. Ehrenfried Honga

CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)