

REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW APPLICATION HEARING
HELD ON 13 FEBRUARY 2025**

IN THE MATTER BETWEEN

D-RAQ TRADING ENTERPRISE CC

APPLICANT

and

**HARDAP REGIONAL COUNCIL
LEEBRO TRADING ENTERPRISES CC
AND OTHERS**

**1ST RESPONDENT
2ND RESPONDENT
3RD – 17TH RESPONDENT**

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

BID NO: NCS/RFQ/HRC-064/2024 – PROVISION OF SECURITY SERVICES FOR HARDAP REGIONAL COUNCIL HEAD OFFICE, MARIENTAL URBAN AND DAWEB CONSTITUENCY FOR TWENTY-FOUR (24) MONTHS

Coram: Mekondjo Katunga (Chairperson), Michael Gaweseb, Lukas Kuduno Siremo and Doné Brinkman, Kenandei Tivikua concurring

Heard: 13 February 2025

Decided: 13 February 2025

REVIEW PANEL ORDER

1. INTRODUCTION

- 1.1 The Review Panel was constituted in terms of section 58(1) of the Public Procurement Act, 2015 as amended, to hear an application lodged by D-RaqTrading Enterprise CC (hereinafter referred to as the “Applicant”), against the Hardap Regional Council, a public entity (hereinafter referred to as the “1st Respondent”).
- 1.2 Having joined the Applicant and the 1st Respondent and other interested parties in terms of Regulation 42(5)(a) of the Public Procurement Regulations (hereinafter referred to as the “Regulations”) of the Public Procurement Act No. 15 of 2015 as amended (hereinafter referred to as the “Act”); and
- 1.3 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. POINTS *IN LIMINE*

- 2.1 As a matter of procedure and before the merits of the matter could be heard, the Chairperson requested the parties to raise any points *in limine*. In response, the following points *in limine* were raised.
- 2.2 The Applicant responded that the 1st Respondent failed to comply with Section 47 read in conjunction with Regulation 35 of the Act. The bid under review was advertised from 4 November till 21 November 2024 which was only thirteen (13) working days instead of thirty (30) working days as required under Regulation 35, therefore the 1st Respondent did not adhere to the timelines as required by the Act.
- 2.3 It further argued that the non-adherence of the 1st Respondent to the prescribed timelines violated the Applicant’s right to be afforded adequate time to prepare its bid, as envisioned by the said provisions.

- 2.4 In response to the points in *limine* the 1st Respondent argued that there is no application in their view as the reconsideration request was responded to on 13 January 2025, which in their view the seven (7) days stand still period lapsed on 22 January 2025. It was later conceded that the 1st Respondent only served Applicant with the response on 16 January 2025 and not 13 January 2025 as stated earlier.

3. FINDINGS OF THE REVIEW PANEL

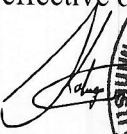
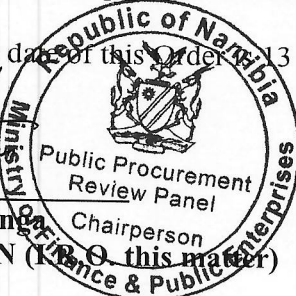
Having considered the evidence filed as part of the record, the Review Panel made the following findings:

- 3.1 That, the 1st Respondent violated Section 47 read in conjunction with Regulation 35. The bidders were not given adequate time to prepare the bid documents. The finding is based on the supreme court judgement, for PIS Security Services CC and Central Procurement Board of Namibia case no: SA 99/2020 paragraph 38 which states the following: *“The Act provides no minimum time but leaves this for the minister to determine in the regulations. The Act even makes it clear what the objectives are which must be met when setting a deadline. Such deadline must ensure time for the proper preparation of bids and be such that all potential bidders interested in the bid will put in proposals. This is to ensure proper competition among bidders”*
- 3.2 That, the reasons in the 1st Respondent’s Executive summary indicate that most of the bidders were disqualified due to failure to submit mandatory documents which contributes to the fatality of the non-adherence to the requirements of the Act.
- 3.3 That, the replying affidavit of the 1st Respondent was defective due to the missing name and signature of the deponent.

4. DECISIONS OF THE REVIEW PANEL

Having considered the above, the Review Panel makes the following order:

- 4.1 Set aside the decision of the public entity in terms of Section 60(c) and order,
- 4.2 That, in terms of Section 60(f) of the Public Procurement Act as amended, the Review Panel orders that the bidding process be terminated and start afresh.
- 4.3 The effective date of this Order is 13 February 2025.



Mekondjo Katunga
CHAIRPERSON (in O this matter)