REPUBLIC OF NAMIBIA

PUBLIC PROCUREMENT REVIEW PANEL

IN THE PUBLIC PROCUREMENT REVIEW HEARING HELD ON 01 AND 19 AUGUST 2025

IN THE MATTER OF

RUBICON SECURITY SERVICES	**APPLICANT**
and	
CENTRAL PROCUREMENT BOARD OF NAMIBIA	**1ST RESPONDENT**
NAMIBIA POST LIMITED	**2ND RESPONDENT**
EYEQ-NESKA JV SECURITY SERVICES CC	**3RD RESPONDENT**
NAKAGALO TRADING CC	**4TH RESPONDENT**
SHIELD FORCE SECURITY SERVICES	**5TH RESPONDENT**
SIX THOUSAND SECURITY SERVICES	**6TH RESPONDENT**
PINY TRADING CC	**7TH RESPONDENT**
AND OTHERS	**8th-23RD RESPONDENTS**

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

NCS/ONB/ONB/CPBN-12/2024-PROVISION OF SECURITY SERVICES (GUARDING& CASH IN TRANSIT) TO NAMPOST LIMIT FOR 36 MONTHS

Coram: Ehrenfried Honga (Chairperson: 01 August 2025), Mekondjo Katunga (Chairperson:19 August 2025), with Michael Gaweseb, Selma-Penna Utonih, Paulina Iyambo (01 August 2025) and Prof Dr Rainer Trede (19 August 2025)

Heard: 01 and 19 August 2025
Decided: 19 August 2025

REVIEW PANEL ORDER

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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 the application lodged by Rubicon Security Services CC, hereinafter referred to as the "Applicant", against the Central Procurement Board of Namibia, the Board, hereinafter referred to as the "1st Respondent".

1.2 Having heard the parties and having read the application for review lodged in terms of Section 59(1) of the Public Procurement Act, 2015 (Act No.15 of 2015) as amended (hereinafter referred to as "the Act"), read with Regulation 42 of the Public Procurement Regulations (hereinafter referred to as the "Regulations"), and having read other relevant documents filed as part of the record, the Review Panel made the following findings and subsequent order in respect of the matter.

2. POINTS IN LIMINE

Two preliminary matters were raised and resolved:

Proof of Service

2.1 The Applicant furnished documentary proof confirming that the review application had been duly served on all interested parties in compliance with Regulation 42 of the Public Procurement Regulations.

Validity of Bid Extension

2.2 The 1st Respondent confirmed and provided documentary proof that the validity period of the bids had been lawfully extended in accordance with section 49 of the Act, thereby ensuring that all bids remained effective at the time of consideration.

Having satisfied itself that these procedural issues were properly addressed, the Review Panel ruled both matters resolved and proceeded to hear the merits of the application.

3. GROUNDS FOR REVIEW BY THE APPLICANT

The Applicant contended that its disqualification was unjustified and procedurally unfair. In particular, the Applicant advanced the following arguments:

3.1 The Applicant conceded that certain pages, including annexed certificates and curriculum vitae, were not initialled. However, it argued that such omission was immaterial and did not affect the integrity or authenticity of its bid. The Applicant maintained that the failure to initial was a *minor irregularity* which the 1st Respondent could and should have allowed to be rectified by clarification.

3.2 The Applicant explained that the submission of a single document in Afrikaans was inadvertent and for internal purposes only. The substance of the document was not disputed, and the Applicant argued that the 1st Respondent placed undue reliance on a technicality rather than the merits of the bid.

3.3 The Applicant argued that the successful bidders quoted rates that were not sustainable when measured against the statutory minimum wage increases scheduled for the contract period. It is submitted that this would inevitably lead to non-compliance with labour laws, unfair competition, and possible service delivery failures.

3.4 On these grounds, the Applicant prayed that the Review Panel set aside the decision of the Board and ordered that the Procurement process be terminated and start afresh.

4. 1st RESPONDENT SUBMISSIONS

4.1 The First Respondent opposed the application and argued that the Applicant admitted non-compliance with express mandatory requirements of the bidding documents pertaining to initialling and language.

4.2 The 1st Respondent argued that the bidding conditions, such as non-compliance, rendered the bid automatically non-responsive and that the Public Procurement Act does not permit the procuring entity to exercise discretion to waive mandatory requirements post-submission, as this would amount to unequal treatment of bidders.

4.3 Furthermore, the 1st Respondent submitted that at the time of bid submission, all responsive bidders complied with the gazetted minimum wage, and the bid conditions already provided mechanisms for adjustment in line with future increases.

4.4 The First Respondent relied heavily on the Supreme Court's authority in *Menzies Aviation (Namibia) (Pty) Ltd v Namibia Airports Company Ltd (2024)*, where it was held that a procuring entity cannot excuse or waive non-compliance with mandatory bid requirements after submission.

4.5 The 1st Respondent accordingly prayed that the application be dismissed in its entirety.

5. 3rd RESPONDENT SUBMISSIONS

5.1 The 3rd Respondent associated itself with the 1st Respondent's submissions and added that the requirement that all documents be in English was clear and unambiguous. Submission of a document in Afrikaans, regardless of purpose, constituted a direct breach.

5.2 Furthermore, the requirement to initial all pages was not cosmetic but intended to safeguard against substitution or alteration of documents post-submission. The Applicant's omission, therefore, struck at the heart of bid integrity.

5.3 On wages, the 3rd Respondent stressed that procurement evaluation cannot be retrospective. At the time of submission, the minimum wage was N$8.75 (rising to N$10.00 the following year), and responsive bidders complied with that threshold.

5.4 The 3rd Respondent therefore submitted that the application was baseless and should be summarily dismissed.

6. FINDINGS OF THE REVIEW PANEL

Upon careful consideration of the oral submissions, affidavits, and the record, the Review Panel makes the following findings:

6.1 The Review Panel finds that indeed the instructions to bidders as contained in the bid documents required that all pages and supporting documents be initialled, and that all documents be submitted in English, and the Applicant's admitted non-compliance constituted a material defect.

6.2 The evidence shows that, at the time of bid submission, the gazetted minimum wage was N$8.75 per hour and that the successful bidders quoted rates above the applicable statutory thresholds and that the contract itself contains mechanisms for wage escalation.

6.3 That while fairness is a guiding principle in procurement, it cannot override explicit statutory and bidding requirements. To invite clarification for non-compliance with mandatory requirements would amount to preferential treatment and compromise the integrity of the procurement process.

6.4 The Review Panel therefore finds that the Applicant's bid disqualification was lawful and justified, and that the evaluation process complied with section 52 (9) of the Public Procurement Act, 2015, as amended.

7. DECISIONS OF THE REVIEW PANEL

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

7.1 That in terms of section 60 (a), the Review Panel hereby dismisses the application and confirms the decision of the Board in line with section 60 (e) of the Public Procurement Act, 2015, as amended.

7.2 The effective date of this Order is 19 August 2025.

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Mekondjo Katunga
Chairperson (for this matter)

Republic of Namibia
Public Procurement
Review Panel
Chairperson
Finance & Public Enterprises