



REPUBLIC OF NAMIBIA

PUBLIC PROCUREMENT REVIEW PANEL

**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 25 SEPTEMBER 2025**

IN THE MATTER OF

**JACOBS AUTO TRUCK, TRACTOR
AND EARTHMOVING REPAIRS CC**

APPLICANT

and

**OSHIKOTO REGIONAL COUNCIL
MMT AUTOMOBILE REPAIRS CC
JNS AUTOMOTIVE GROUP
GENESIS TRUCK AND AUTO REPAIRS**

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

4th RESPONDENT

MECHANCARS AUTO REPAIRS & PANEL BEATING CC

5th RESPONDENT

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

BID NO – NCS/ONB/ORC-01/2024 – PROVISION OF SERVICES, REPAIRS AND OVERHAUL OF ALL OSHIKOTO REGIONAL COUNCIL AND DELEGATED FUNCTIONS FLEET FOR A PERIOD OF THIRTY-SIX (36) MONTHS

Coram: Brownny Mutrifa (Chairperson), with Rainer Trede, Mekondjo Katunga, Lukas Kudumo Siremo, and Selma-Penna Utonih

Heard: 25 September 2025

Decided: 25 September 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 the application lodged by Jacob's Auto Truck, Tractor and Earthmoving Repairs CC, hereinafter referred to as the "Applicant", against the Oshikoto Regional Council a public entity, 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. GROUNDS FOR REVIEW BY THE APPLICANT

- 2.1 The Applicant challenges the cancellation of the bid for the 2nd time by the 1st Respondent, relating to the procurement of services for the repair and overhaul of its fleet over a period of 36 months.
- 2.2 The Applicant argued that the 1st Respondent failed to comply with the Review Panel's order dated 24 July 2025, which expressly directed a *re-evaluation* of bids in accordance with the published evaluation criteria.
- 2.3 Instead of re-evaluating, the 1st Respondent appointed a new Bid Evaluation Committee (BEC) that effectively carried out a fresh evaluation and then cancelled the bid, contrary to both the Panel's order and the Act.
- 2.4 The Applicant further argued that the 1st Respondent's reliance on ambiguity in the bidding criteria as justification for cancellation is unfounded, as the same criteria were used in the first evaluation, where the Applicant scored 61%.

- 2.5 It further submitted that the alleged ambiguity arises from the 1st Respondent's own bidding documents and cannot be used to the prejudice of compliant bidders.
- 2.6 The Applicant contended that the 1st Respondent's reliance on section 54(1)(g) of the Act ("does not achieve the expected outcome") was misplaced, as the evaluation had reached an outcome and bidders had been scored.
- 2.7 The Applicant therefore requested that the Review Panel set aside the cancellation, find the 1st Respondent in non-compliance with the earlier order, and direct a proper re-evaluation using the published criteria.

3. 1st RESPONDENT'S RESPONSE

- 3.1 The 1st Respondent stated that they complied fully with the Order of the Review Panel to re-evaluate, and the process was done fairly and transparently. A new Committee was appointed with all new members, and they have concluded a new evaluation process independently.
- 3.2 The Bid Evaluation Committee has recommended cancellation due to ambiguity in the bidding document, and they could not proceed to all stages of the evaluation, and therefore recommended Cancellation in terms of Section 54(1) (g) of the Act.
- 3.3 The newly appointed BEC, upon review, found that the technical evaluation criteria were open-ended, subjective, and ambiguous, rendering it impossible to proceed fairly with the re-evaluation.
- 3.4 That the newly appointed committee carefully and independently assessed the evaluation criteria against the required services and established that the criteria set in the bid are closed-ended and subjective. They further find that the criteria are vague with no clear sub-criteria.
- 3.5 The Respondent contended that the financial evaluation was also defective, as the bidding document only provided for an *hourly rate* with no breakdown or formula to determine whether the pricing was fair and reasonable.
- 3.6 The 1st Respondent therefore maintained that its decision to cancel was lawful and procedurally correct, and that justice was done by ensuring the process remains transparent and consistent with procurement principles.
- 3.7 It concluded that the Panel should dismiss the application and uphold the cancellation as a proper exercise of its powers under section 54 of the Act.

4. FINDINGS OF THE REVIEW PANEL

4.1 The Review Panel was required to determine:

- a) Whether the 1st Respondent lawfully complied with the Review Panel's order of 24 July 2025.
- b) Whether the appointment of a new BEC and subsequent "cancellation" amounted to a proper re-evaluation as contemplated by the order.
- c) Whether the decision to cancel the procurement process under section 54(1)(g) was lawful and justified.

After careful consideration of all oral arguments and the record, the Review Panel's findings are as follows:

4.2 The Review Panel finds that the 1st Respondent did not comply with the directive to re-evaluate the Applicant's bid. Instead, a new BEC was constituted, which performed a fresh evaluation of the entire bidding document, contrary to the clear intent of the earlier order. A re-evaluation must be undertaken by the same BEC that previously evaluated the bids to correct and adjust its prior scoring within the parameters of the published criteria. The new BEC, therefore, acted ultra vires and its findings have no legal effect.

4.3 The Review Panel notes that the bidding document indeed contained evaluation criteria with numerical weightings (e.g., "proof of technical expertise – 20 points") but lacked further sub-criteria. However, the absence of sub-criteria does not render the process impossible; rather, it requires the evaluators to apply the stated criteria consistently and reasonably.

4.4 The BEC could not rely on its own uncertainty as justification to cancel the process. The failure to define sub-criteria was a deficiency of the 1st Respondent's own making and cannot be used to prejudice compliant bidders.

4.5 The Review Panel is not convinced that the reliance on section 54(1)(g) ("does not achieve the expected outcome") as a lawful basis for cancellation. This provision is not intended to permit cancellation merely because the evaluation committee finds its own criteria difficult to apply.

5. DECISIONS OF THE REVIEW PANEL

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

5.1 The purported re-evaluation conducted by the newly appointed BEC is declared null and void, so as the decision to cancel the bidding process is hereby set aside in terms of section 60 (c) of the Public Procurement Act, 2015, as amended.

5.2 The 1st Respondent is directed to ensure that the original BEC that conducted the first evaluation re-evaluates the Applicant's bid strictly in accordance with the published evaluation criteria, without the use of undisclosed sub-criteria or internal scoring frameworks.

5.3 The 1st Respondent must complete the re-evaluation process and submit proof of implementation of this order to the Procurement Policy Unit within thirty (30) days of receipt hereof, copying the Review Panel Secretariat.

5.4 The effective date of this Order is 25 September 2025.



Brownie Mutrifa
Chairperson (for this matter)