



REPUBLIC OF NAMIBIA

PUBLIC PROCUREMENT REVIEW PANEL

**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 24 JULY 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**

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

GENESIS TRUCK AND AUTO REPAIRS

4th RESPONDENT

MECHANCARS AUTO REPAIRS & PANEL BEATING CC

5th RESPONDENT

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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 AL OSHIKOTO REGIONAL COUNCIL AND DELEGATED FUNCTION FLEET FOR THE PERIOD OF THIRTY-SIX (36) MONTHS

Coram: Selma-Penna Utonih (Chairperson), with Paulina Kandali Iyambo, Mekondjo Katunga, Brown Mutrifa, and Michael Gaweseb.

Heard: 24 July 2025

Decided: 24 July 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 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 alleges that the cancellation was procedurally unfair and that its bid was not properly evaluated according to the criteria set out in the bidding documents.
- 2.3 The Applicant submitted a bid in response to the public invitation issued by the 1st Respondent. The Applicant was later informed only after its own follow-up inquiry that the entire bidding process had been cancelled on the grounds that none of the bidders met the minimum technical threshold of 70%.
- 2.4 The Applicant disputes this decision and contends that it complied fully with all technical and legal requirements. It further avers that the 1st Respondent evaluated its bid using undisclosed sub-criteria and that the scoring was arbitrary and unreasonable.

- 2.1 According to the Applicant, they were disqualified at the Technical Evaluation Criteria as indicated on page 28 of the Bidding Document. The Applicant duly complied with all the Technical Evaluation Criteria as required per Phase 3 of the bidding document.
- 2.2 The Applicant further argues that they submit the proof of technical expertise for key personnel dedicated to this project (qualification of owner/artisans), and the qualifications for the owner were submitted.
- 2.3 The Applicant further narrated that Section II – ITB 5.5 (c), stated that “*The essential equipment to be made available for the contract by the successful bidder*” on which a physical inspection took place. The 1st Respondent did not stipulate on how the marks would be allocated, and the requirements are not clear in the bidding document on marks will be allocated.

3. 1st RESPONDENT’S RESPONSE DURING THE HEARING PROCEEDINGS

- 3.1 The 1st Respondent, in its submissions, contended that the Applicant scored **61%**, below the minimum technical threshold of **70%**, as stipulated in the bidding document. This justified its exclusion from further consideration.
- 3.2 The Bid Evaluation Committee (BEC) applied its discretion during evaluation, relying on experience, qualifications, reference letters, and physical inspection outcomes. It submitted that this is in line with its mandate under Section 26 of the Act, which empowers BEC to conduct detailed assessments within the scope of disclosed criteria.
- 3.3 The 1st Respondent acknowledged that the technical criteria outlined in the bidding document (e.g., 20 points for technical expertise) were further broken down during the evaluation into sub-components, specifically assessing experience in servicing, repair, and overhaul, each weighted roughly equally. However, this breakdown was not disclosed in the original bid documents.
- 3.4 According to the 1st Respondent, the Applicant submitted reference letters and purchase orders, but these did not clearly confirm experience across all three areas (servicing, repair, and overhaul). The 1st Respondent asserted that it was not convinced the Applicant had the full scope of experience required for the contract.
- 3.5 The 1st Respondent confirmed that a site visit took place and that the Applicant had equipment on-site. However, it contended that the “usefulness” of the equipment could not be verified or demonstrated conclusively. This concern formed part of the rationale for assigning only 5 out of 10 points in this category.
- 3.6 The Public Entity further submitted that the cancellation of the procurement process was done in good faith, pursuant to Section 54(1)(a) of the Act, on the basis that no bidder met the minimum responsive requirements, and that proceeding to award under such circumstances would have undermined the integrity of the procurement process.

4. FINDINGS OF THE REVIEW PANEL

4.1 The Review Panel was called upon to determine:

- a) Whether the Applicant's bid was fairly and lawfully evaluated in accordance with the stated criteria; and
- b) Whether the 1st Respondent's decision to cancel the procurement process met the legal requirements and procedural fairness.

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

- 4.2 That the scoring methodology employed by the BEC introduced sub-criteria (e.g. equal weight to servicing, repair, and overhaul) that were not disclosed to bidders. This violates the principles of transparency and predictability in public procurement, as required under Section 50(2) of the Act.
- 4.3 That the Applicant submitted documentation that satisfied the express requirements in the bidding documents, including equipment lists, CVs, and qualifications. The deductions made by the BEC were based on subjective interpretation and internal expectations not communicated in advance to bidders.
- 4.4 That while section 54(1)(a) of the Act permits cancellation if "no responsive bid is received." The Review Panel finds that the determination of non-responsiveness in this case was flawed, as the evaluation criteria were not transparently or fairly applied. Accordingly, the justification for cancellation is not supported by the facts or law.

5. DECISIONS OF THE REVIEW PANEL

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

- 5.1 That the decision of the 1st Respondent to cancel the bid is hereby set aside in its entirety, in terms of section 60 (c) of the Public Procurement Act, 2015, as amended.
- 5.2 That the 1st Respondent is directed to re-evaluate the Applicant's bid, strictly in accordance with the published bidding criteria, without applying undisclosed sub-criteria or internal scoring frameworks.
- 5.3 The public entity must provide proof of implementation of this Order to the Procurement Policy Unit within thirty (30) days of receipt of this Order, with a copy of such a report sent to the Review Panel Secretariat.
- 5.4 The effective date of this Order is 24 July 2025.

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Selma-Penna Ufonih
Chairperson (for this matter)

