

REPUBLIC OF NAMIBIA



**PUBLIC PROCUREMENT REVIEW PANEL**

**Case Number: RA/03-03/2026**

**ORDER**

In the matter between:

**NOKAGALO TRADING CC**

**APPLICANT**

And

**BUSINESS & INTELLECTUAL PROPERTY AUTHORITY**

**1<sup>ST</sup> RESPONDENT**

**SHIELD FORCE SECURITY SERVICES CC**

**2<sup>ND</sup> RESPONDENT**

**AND OTHER 22 INTERESTED PARTIES**

**Citation:** *Nokagalo Trading CC v. Business & Intellectual Property Authority & Others*  
(RA/02-06/2026)

**Coram:** Hendricus Beukes (Chairperson), Effaishe Nghiidipaa, Martha Mwatile, Hannu Shipena and Ehrenfried Honga.

**Heard: 23 March 2026**

**Decided: 23 March 2026**

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**IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC  
PROCUREMENT ACT, ACT NO 15 OF 2015, AS AMENDED**

*BID NO: NCS/ONB/BIPA-05/2025-(THE PROVISION OF SECURITY SERVICES FOR  
BIPA HEAD OFFICE, WANAHEDA OFFICE, ROBERT MUGABE OFFICE FOR A PERIOD  
OF 24 MONTHS)*

**1. INTRODUCTION**

- 1.1 The Review Panel was constituted in terms of section 58 (1) of the Public Procurement Act 2015 (Act 15 of 2015) as amended (the "Act"), to hear an application lodged by Nokagalo Trading CC (hereinafter referred to as the "Applicant"), against the Business & Intellectual Property Authority, a public entity, (hereinafter referred to as the "1<sup>st</sup> Respondent").
- 1.2 Having joined the Applicant and the 1<sup>st</sup> 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 contained herein.

**2. Submissions by the Applicant**

- 2.1 The Applicant submitted that the 1<sup>st</sup> Respondent required bidders, in terms of the bidding document, to provide separate rates for normal working days (Monday to Saturday) and for Sundays and public holidays.
- 2.2 The Applicant argued that, despite this requirement being expressly included in the bidding document, the 1<sup>st</sup> Respondent failed to properly evaluate or give effect to these distinctions during the evaluation process.
- 2.3 The Applicant further submitted that the applicable labour legislation requires that employees be remunerated at an increased rate for work performed on Sundays and Public Holidays.

2.4 It was contended that the successful bidder quoted a uniform hourly rate of N\$20.70 across all days, without differentiating between normal working days and Sundays or public holidays, and that such pricing does not reflect compliance with the applicable labour requirements and relevant Government Notice.

2.5 The Applicant further argued that, based on its calculations, any bid that properly accounts for the required increased remuneration for Sundays and public holidays would exceed N\$2 million. Accordingly, bids priced below this threshold are indicative of non-compliance and ought to have been found non-responsive.

2.6 The Applicant concluded that the 1<sup>st</sup> Respondent either failed to apply its own bidding requirements or failed to properly apply the applicable legal framework in conducting the evaluation.

### **3. Submissions by the 1<sup>st</sup> Respondent**

3.1 The 1<sup>st</sup> Respondent submitted that it is not the employer of the personnel to be deployed under the contract, and that the responsibility for compliance with the Labour Act rests with the selected bidder.

3.2 The 1<sup>st</sup> Respondent further argued that, in its understanding, the applicable minimum wage of N\$16 per hour for the year 2026 applies generally, irrespective of whether the work is performed on a Sunday or a public holiday. It was contended that the evaluation process was limited to verifying whether bidders' rates met or exceeded the prescribed minimum hourly rate of N\$16.

3.3 The 1<sup>st</sup> Respondent submitted that the successful bidder quoted a rate above the minimum threshold and therefore met the requirement. It further argued that the way the bidder remunerates its employees, including any arrangements relating to Sundays and public holidays, falls outside the scope of bid evaluation and is instead subject to oversight by the Labour Commissioner during contract implementation.

3.4 The 1<sup>st</sup> Respondent concluded that the evaluation was conducted in accordance with the principles of cost-effectiveness and compliance with the minimum statutory wage requirements. It further relied on section 22(5) of the Labour Act, which permits employers and employees to enter into alternative arrangements regarding working



conditions, as support for its position that differentiated rates were not strictly required at the evaluation stage.

#### **4. Submissions by the 2<sup>nd</sup> Respondent**

4.1 The 2<sup>nd</sup> Respondent submitted that its pricing does not violate the provisions of the Labour Act, notwithstanding that it did not expressly provide separate or double rates for Sundays and Public Holidays. In addition, the 2<sup>nd</sup> Respondent indicated the rate of N\$20.70 used by the 1<sup>st</sup> Applicant was indeed incorrect and is not reflected anywhere in its bidding document.

4.2 The 2<sup>nd</sup> Respondent argued that its overall pricing structure provides sufficient financial margin to enable compliance with any applicable requirements for enhanced remuneration for work performed on Sundays and public holidays.

4.3 The 2<sup>nd</sup> Respondent further submitted that its quoted rates exceed the prescribed minimum wage and that it remains capable of complying with all applicable labour obligations while maintaining profitability under the contract.

#### **5. FINDINGS OF REVIEW PANEL**

Having considered the evidence, submissions, and the applicable law, the Review Panel makes the following findings:

5.1 The Review Panel finds that the bidding document expressly required bidders to provide separate pricing for normal working shifts, being Monday to Saturday, and for Sundays and public holidays. This distinction was clearly reflected in the Price Activity Schedule and formed a material component of the bid.

5.2 The Review Panel is of the view that the only reasonable inference to be drawn from the separation of pricing for normal working days, on the one hand, and Sundays and public holidays, on the other, is that the 1<sup>st</sup> Respondent intended to give effect to section 21(5) of the Labour Act, or at the very least to ensure that bids reflected differentiated labour cost implications associated with work performed on such days.

5.3 During the hearing, the Review Panel sought clarity from the 1<sup>st</sup> Respondent regarding the purpose of this distinction and the way it was evaluated. The 1<sup>st</sup> Respondent was unable to provide a clear, coherent, or satisfactory explanation in this regard. The

Review Panel finds that there is no evidence on the record demonstrating that the pricing for Sundays and public holidays was meaningfully evaluated as a distinct requirement. Instead, the evaluation appears to have been confined to whether the quoted hourly rate met or exceeded the minimum wage threshold.

5.4 The Review Panel finds that an evaluation limited solely to compliance with the minimum hourly wage is insufficient where the bidding document expressly required a differentiated pricing structure. Once the 1<sup>st</sup> Respondent elected to include separate pricing categories in the bidding document, it was obliged to evaluate those categories in a manner that was fair, transparent, and consistent. The failure to do so constitutes a material procedural oversight.

5.5 While the Review Panel accepts that the enforcement of labour obligations during contract implementation ordinarily rests with the contractor and may fall under the oversight of the Labour Commissioner, this does not relieve the 1<sup>st</sup> Respondent of its duty to evaluate compliance with the requirements of its own bidding document at the bid evaluation stage. By requiring separate pricing for Sundays and public holidays, the 1<sup>st</sup> Respondent created a legitimate expectation that such pricing would be assessed on a comparable and equal basis.

5.6 The Review Panel accordingly concludes that the 1<sup>st</sup> Respondent failed to evaluate the bids in accordance with section 52 (9). The evaluation process was therefore inconsistent with the principles governing public procurement. The selection decision is consequently reviewable and liable to be set aside.

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## ORDER

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In the result of the above findings, the following order is made:

1. In terms of section 60(c) of the Act, the decision of the 1<sup>st</sup> Respondent is hereby set aside in whole, and the matter is remitted to the 1<sup>st</sup> Respondent for re-evaluation.
2. That the public entity must provide proof of implementation of this Order to the Review Panel Secretariat within thirty (30) days.



3. This Order shall take immediate effect on the date the parties receive it.



  
Hendricus Beukes  
Chairperson