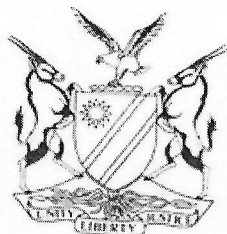


REPUBLIC OF NAMIBIA



PUBLIC PROCUREMENT REVIEW PANEL

Case number: RA/03-07/2026

ORDER

In the matter between:

AUAS MOTORS (PTY) LTD

APPLICANT

and

**MINISTRY OF AGRICULTURE, FISHERIES,
WATER AND LAND REFORM**

1ST RESPONDENT

REDCO MOTORS (PTY) LTD T/A GOBABIS TOYOTA

2ND RESPONDENT

NOVEL MOTORS COMPANY (PTY) LTD

3RD RESPONDENT

Citation: *Auas Motors (Pty) Ltd v Ministry of Agriculture, Fisheries, Water and Land Reform and Others (RA/03-07/2026)*

Coram: Hilka Alberto (Chairperson), Martha Haipinge, Lukas Kudumo Siremo, Titus Kanyanda, and Hendricus Beukes.

Heard: 09 April 2026

Decided: 09 April 2026

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

[BID NO: G/RB/38-03/2025-SUPPLY AND DELIVERY OF TWENTY-THREE (23)
VEHICLES FOR THE DEPARTMENT OF WATER AFFAIRS]

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 Auas Motors (Pty) Ltd, (hereinafter referred to as the "Applicant"), against the Ministry of Agriculture, Fisheries, Water and Land Reform a public entity, (hereinafter referred to as "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 respective 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. POINT IN LIMINE

- 2.1 The Chairperson invited the parties to raise any preliminary issues prior to the hearing of the merits. All parties confirmed that there were no preliminary issues to be raised.
- 2.2 However, the Chairperson raised the issue of the late filing of the 1st Respondent's replying affidavit. The 1st Respondent confirmed that it was served with the application for review on 20 March 2026; and its response was filed on 27 March 2026, outside the prescribed period.
- 2.3 The 1st Respondent conceded that the filing was out of time and acknowledged the legal implications thereof.

2.4 Consequently, the Review Panel ruled that the 1st Respondent's replying affidavit was not properly before the Panel. The matter would proceed without reliance on the Respondent's affidavit, although the 1st Respondent would be permitted to provide clarification during the proceedings, should the Review Panel deem it fit.

3. SUBMISSIONS BY THE APPLICANT

- 3.1 The Applicant submitted that the procurement process resulted in the award being made to another bidder, notwithstanding that the Applicant's bid was approximately N\$3.5 million lower than that of the successful bidder. The Applicant contended that its disqualification was premised on the alleged failure to submit a complete list of shareholders together with identity documents for such shareholders, as required by the bidding documents. The Applicant further submitted that its request for reconsideration was never responded to.
- 3.2 The Applicant argued that it had, in fact, complied with the requirement to provide a list of shareholders. In this regard, it was submitted that the Applicant's bid documentation clearly reflects that its sole shareholder is Nictus Holdings Limited, a juristic person. The Applicant emphasized that, as a company, Nictus Holdings Limited does not possess an identity document, and consequently, it was impossible for the Applicant to furnish such a document.
- 3.3 In advancing this argument, the Applicant relied on the established legal principle that the law does not compel the performance of an impossibility (*lex non cogit ad impossibilia*). It was submitted that the 1st Respondent, being bound by the law, could not lawfully require compliance with a condition that is inherently incapable of fulfilment. The disqualification of the Applicant on this basis was therefore irrational.
- 3.4 Additionally, the Applicant submitted that even if there had been any perceived non-compliance, such non-compliance would not have been material. Counsel argued that the alleged omission did not affect the substance of the bid nor confer any unfair advantage and should therefore have been treated as a minor deviation capable of being waived. In this

regard, reliance was placed on the principle of substantial responsiveness, which requires evaluators to distinguish between material and immaterial deviations and to avoid disqualifying bids on purely technical or inconsequential grounds.

3.5 The Applicant further contended that the purpose of public procurement is to secure goods and services in a fair, competitive, and cost-effective manner. In the present case, the exclusion of the Applicant's bid, which was significantly lower in price, undermined this objective and resulted in a potential financial prejudice to the State.

3.6 In light of the foregoing, the Applicant sought an order reviewing and setting aside the notice of selection of award dated 24 February 2026, together with all decisions related thereto. The Applicant further prayed that the matter be remitted to the 1st Respondent for reconsideration, with a direction that the Applicant's bid be properly evaluated in accordance with the applicable criteria and legal principles.

4. FINDINGS BY THE REVIEW PANEL

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

4.1 The central issue for determination is whether the disqualification of the Applicant on the basis of its alleged failure to provide shareholders' identity documents was lawful and in accordance with the bidding requirements.

4.2 The Review Panel finds that the Applicant did, in fact, provide a list of its shareholders, which reflects that its sole shareholder is Nictus Holdings Limited, a juristic person. It is a common cause that a juristic person does not possess an identity document.

4.3 In this regard, the Review Panel finds that the requirement to provide an identity document in respect of a juristic shareholder constitutes an impossibility. The Review Panel aligns itself with the established legal principle that the law does not compel the performance of an impossibility. Accordingly, the 1st Respondent acted irrationally and unlawfully in

disqualifying the Applicant for failing to comply with a requirement that could not be fulfilled.

4.4 The Review Panel further finds that the 1st Respondent confirmed during the proceedings that the bidding process was restricted to motor vehicle companies and that there were no restrictions pertaining to ownership structure or the nature of shareholders. In such circumstances, the requirement for identity documents of shareholders, particularly where the shareholder is a juristic person, is irrelevant to the evaluation of the bid and does not advance any lawful procurement objective.

4.5 The Review Panel accordingly finds that the 1st Respondent failed to evaluate the Applicant's bid in accordance with the criteria and methodology set out in the bidding documents, as required by section 52(9) of the Act.

4.6 The Review Panel is satisfied that the irregularity identified does not render the entire procurement process fundamentally defective, and that the bidding criteria remain capable of proper application. Accordingly, the appropriate remedy is to remit the matter to the 1st Respondent for re-evaluation of the bids in compliance with the Act and applicable principles.

ORDER

In the result, the following order is made:

1. The notice of selection of award dated 24 February 2026, and any decision related thereto, is hereby set aside in its entirety in terms of section 60(c) of the Act, and the 1st Respondent is ordered to re-evaluate the bids in accordance with the criteria and methodology set out in the bidding documents.
2. This Order shall take immediate effect on the date it is received by the parties.



Seal

A handwritten signature in black ink, appearing to be "Hilka Alberto". The signature is stylized and somewhat cursive, with a long horizontal stroke extending to the right.

Hilka Alberto
Chairperson