

SAFE ROADS TO PROSPERITY

ROADS AUTHORITY
Private Bag 12030
Ausspannplatz
Windhoek
NAMIBIA

NOTICE OF AWARD

BID NO: W/ONB/RA-06/2024: CONSTRUCTION SERVICES FOR THE LABOUR-BASED CONSTRUCTION USING NEW MATERIAL FOR DISTRICT ROAD (DR3662): TSANDI TO IIPANDA (APPROXIMATELY 28 KM) IN THE OMUSATI REGION

Award Date	Company/Entity Awarded	Awarded Amount
08 August 2025	Moza Investments CC JV Geckoh 58 Investments Group PTY LTD	N\$ 102,237,121.60 (inclusive of VAT)



Established in terms of the Roads Authority Act, 1999 (Act 17 of 1999)
Board of Directors: Ms L. Brandt (Chairperson), Mr P. Muluti (Deputy Chairperson), Ms H. Amupolo, Mr T. Hamata,
Mr G. Kadhikwa, Mr P. Greeff, Dr. G. Tshoopara

Executive Summary of Bid Evaluation Report

CONSTRUCTION SERVICES FOR THE LABOUR-BASED CONSTRUCTION TO GRAVEL STANDARDS OF DISTRICT ROAD (DR3662): TSANDI TO IIPANDA OMUSATI REGION

W/ONB/RA-06/2024

1. Scope of Contract: Construction Services
2. Procurement method used: Open National Bidding
3. Date of Invitation of Bids: 01 July 2024
4. Closing date for submission of bids: 13 September 2024
5. Date and place of opening of bids: 13 September 2024 at 11:00. Bids were submitted at the Roads Authority: Head Office, Corner of Mandume Ndemufayo Avenue & David Hosea Meroro Road, Southern Industrial Area, Windhoek
6. Number of bids received by closing date: 10
7. Responsiveness of bids: 50%

Responsiveness of Bids:

Bidder' s Name	Pricing at Bid Opening NS	Responsive or not responsive (Yes/ No)	Reasons why bid is not responsive
Hungwe Civil Engineering & Construction JV New Success Investment	129,039,697.37	Yes	N/A
Kettu Trading Enterprises Cc	108,647,929.81	No	Schedule A2, failed to provide an affirmative action compliance certificate as per BDS ITB 13.1 (k)
Thohi Construction Cc	125,167,097.69	No	Schedule B2, failed to provide certificate indicating Emerging/SME Status as per BDS ITB 13.1 (k)

Moza Investments Cc JV Geckoh 58 Investments Group	102,237,121.60	Yes	N/A
Maperes Investments Cc	109,204,573.57	No	Schedule B2, Bid submission form is not fully filled in as per BDS ITB 14.1.
Kambwa Construction (Pty) Ltd	105,810,276.78	Yes	N/A
Sash Trading &	99,989,619.11	Yes	N/A
Zero Six Five Trading Cc JV N Olune Properties Cc	119,082,772.72	Yes	N/A
Ndakalimwe Investment Cc	109,568,451.36	Yes	Schedule A2, failed to submit Undertaking letter of the Labour Act as per BDS ITB 13.1 (k).
John Namusheshe Construction & Investments (Pty) Ltd	121,316,006.46	No	Schedule A2, Undertaking Letter of Labour Act is incomplete as per BDS ITB 14.1 (k).

8.Price compliance for bids that are substantially responsive:

Name	A. Price at Bid Opening N\$	B. Bid Price after corrections	C. price after Adjustments N\$	D. Price after Margin of Preference <i>[If applicable]</i>	Rank
Sash Trading & Earthworks Cc	99,989,619.11	99,989,619.11	99,989,619.11		
Moza Investments Cc JV Geckoh 58 Investments Group	102,237,121.60	102,237,121.60	102,237,121.60		
Kambwa Construction (Pty) Ltd	105,810,276.78	105,810,276.78	105,810,276.78		
Hungwe Civil Engineering & Construction JV New Success Investment	129,039,697.37	112,385,320.76	112,385,320.76		
Zero Six Five Trading Cc JV N Olune Properties Cc	119,082,772.72	118,426,007.72	118,426,007.72		

9. Overall Mean of Received Bids (Road Works)

		Bidder 7	Bidder 4	Bidder 6	Bidder 1	Bidder 8
		Sash Trading & Earthworks Cc	Moza Investments Cc JV Geckoh 58	Kambwa Construction (Pty) Ltd	Hungwe Civil Engineering & Construction JV	Zero Six Five Trading Cc JV N Olune Properties
Overall Joint Bid Price		78,947,494.88	80,901,844.87	84,008,936.33	89,726,365.88	94,979,137.15
10% higher	94,284,031.40	-7.89%	-5.61%	-1.99%	4.68%	10.81%
Mean	85,712,755.82					
10% lower	77,141,480.24					
10% higher	91,254,270.65	-4.83%	2.48%	1.27%	8.16%	14.49%
Employers value of works	82,958,427.86					
15% lower	70,514,663.68					

In accordance with ITB 6.3 and Clause 2(b) of Section III, the Bid with the lowest corrected Bid price, which is substantially complying, will be evaluated for the technical admissibility. Subsequently, Bidder 7 Sash Trading & Earthworks Cc will be evaluated for the technical admissibility.

10. Technical Responsiveness for Bidder 7

Bidder No	Bidder Name:	Line of Credit	Audited Balance Sheets	Average Annual Construction turnover	Experience of Firm	Relevant Competence of staff	Availability and Sufficient of Appropriate equipment	Comments
7	Sash Trading & Earthworks cc	Pass	Pass	Pass	Pass	Fail	Fail	Fail

11. Detailed Technical Unresponsiveness of Bidder 7

Bid No	Name of Bidder	Relevant Competence of staff
7	Sash Trading & Earthworks cc	<u>Site Agent</u> <ul style="list-style-type: none"> Does not have substantial proof of experience on their CV that meets the qualification requirements as per BDS ITB 6.3 (d). Does not meet the 5 years' experience in rural road construction. Only has 2 years. Does not meet the 2 projects of similar magnitude and complexity in a similar capacity during the last 8 years. Only has 1 project experience. No experience in labour-based projects in rural areas of Namibia. <u>Foreman</u> <ul style="list-style-type: none"> Does not have substantial proof of experience on their CV that meets the qualification requirements as per BDS ITB 6.3 (d). Does not meet the 5 years' experience in rural road construction. Only has 3 years.
		Availability and sufficiency of appropriate equipment
		<ul style="list-style-type: none"> No provision for a bulldozer provided for No provision for a grid roller provided for Grader capacity provided for does not meet the required capacity

After assessing the submitted documentary evidence, **Bidder 7 did not pass the technical requirements of the site personnel as set forth in the Bidding Document.** The Evaluation Committee concluded that bidder 7 is technically unable to successfully perform the contract because of major short comings in the site personnel and equipment and was therefore disqualified.

In refence to the review panels findings paragraph 8.2 the Applicant was only substantially responsive to Section 3., Evaluation Criteria no. 1 and no. 2: Evaluation of Bids (Pages 37-40). The applicant was however not substantially responsive to Section B. Experience of the Firm Criteria on page 41 and as further stipulated in detail above. **It should further**



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ROADS AUTHORITY

EXECUTIVE SUMMARY OF BID RE-EVALUATION REPORT

***Construction Services for the Labour-Based Construction to Gravel
Standards of District Road (DR3662): Tsandi to Iipanda
(approximately 28 km) in the Omusati Region***

Procurement Reference No: ***W/ONB/RA-06/2024***

be noted that the applicant Sash trading & Earthworks Cc is the lowest corrected responsive bidder to the bid price but not the lowest substantially responsive evaluated bidder.

As pursuant to Section III Clause 2 D, the bid with the next lowest corrected Bid Price, Bidder 4 Moza Investments Cc Jv Geckoh 58 Investments Group was then evaluated for the technical criteria.

The evaluation of the technical criteria resulted in the following:

12. Technical Responsiveness for Bidder 4

Bidder No	Bidder Name:	Line of Credit	Audited Balance Sheets	Average Annual Construction turnover	Experience of Firm	Relevant Competence of staff	Availability and Sufficiency of Appropriate equipment	Comments
4	Moza Investments Cc JV Geckoh 58	Pass	Pass	Pass	Pass	Pass	Pass	Pass

After assessing the submitted documentary evidence, the next lowest evaluated bidder 4 passed all the technical requirements as set forth in the Bidding Document, ITB 6.3 and Section III, 2. (b). The Evaluation Committee concluded that bidder 4 is technically able to successfully perform the contract.

13. Best Evaluated Bid:

Bidder #	Bidder Name	Bid Price (Vat Incl.) N\$	Comments
4	Moza Investments Cc JV Geckoh 58 Investments Group	102,237,121.60	Recommended for Award.



REPUBLIC OF NAMIBIA

PUBLIC PROCUREMENT REVIEW PANEL

**IN THE PUBLIC PROCUREMENT REVIEW APPLICATION HEARING
HELD ON 16 and 23 MAY 2025**

IN THE MATTER BETWEEN

SASH TRADING & EARTHWORKS CC

APPLICANT

and

**ROADS AUTHORITY
AND OTHERS**

1ST RESPONDENT

2ND - 8TH RESPONDENTS

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

Bid No: W/ONB/RA-06/2024 – CONSTRUCTION SERVICES FOR THE LABOUR-BASED CONSTRUCTION TO GRAVEL STANDARDS OF DISTRICT ROAD (DR3662): TSANDI TO IIPANDA IN THE OMUSATI REGION

Coram: Paulina Kandali Iyambo (Chairperson), Selma-Penna Utonih, Michael Gaweseb, Rainer Trede and Tulimeyo Kaapanda concurring

Heard: 16 May 2025

Decided: 23 May 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 applications lodged by Sash Trading & Earthworks CC (hereinafter referred to as “the Applicant”), against the Roads Authority, a public entity (hereinafter referred to as “the 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 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. ADMINISTRATIVE OVERSIGHT BY THE REVIEW PANEL AND SUBSEQUENT CURE

- 2.1 At the outset, the Review Panel acknowledges an unfortunate administrative oversight in the scheduling of the review hearing held on 16 May 2025. Specifically, the invitation letters to the respective parties reflected conflicting times: the invitation to the 1st Respondent indicated 14h30, while the invitation to the Applicant and other interested parties reflected 09h40. Copies of the respective invitation letters are attached, marked “RP1.” Consequently, the proceedings commenced at 09h40 in the absence of the 1st Respondent, under the assumption that the party had opted not to attend.

2.2 This error only came to light when representatives of the 1st Respondent arrived for the hearing at 14h00, consistent with the time indicated in their invitation letter. In a subsequent letter dated 20 May 2025 (attached hereto and marked “RP2”), the 1st Respondent notified the Review Panel that it had not been afforded an opportunity to be heard and requested guidance on the appropriate way forward.

2.3 Having considered the *audi alteram partem* principle, Article 18 of the Namibian Constitution, and the objectives of the Act, the Review Panel recognized its obligation to ensure procedural fairness by affording the 1st Respondent an opportunity to be heard.

2.4 Given that the Review Panel had not yet issued its decision and thus had not concluded the matter, a continuation hearing was scheduled to provide the 1st Respondent with an opportunity to participate. The parties were duly invited to attend the continuation hearing on 23 May 2025. Copies of these invitation letters are attached hereto and marked “RP3.”

2.5 In response, the 1st Respondent, in a letter dated 22 May 2025 (marked “RP4”), raised objections, stating:

"Your letter acknowledges this 'unintended administrative oversight' but fails to recognize the severe legal implications of proceeding with and concluding a hearing in RA's absence. This is not merely an administrative error that can be remedied by affording RA an opportunity to be heard as indicated in paragraph 4 of your letter. There is no provision for the procedure you intend to adopt neither in the Public Procurement Act nor in the Regulations governing the Review Panel.

When the Review Panel heard the applicant on 16 May 2025, concluded the proceedings, deliberated among panel members and adjourned, the Review Panel became *functus officio* with respect to this matter. The Panel cannot now simply reopen proceedings it has already concluded. The fact that the Review Panel has not yet communicated its decision is of no consequence; the manner in which it proceeded on 16 May was highly irregular.

Please be advised that RA will not attend the hearing scheduled for 23 May 2025, as doing so would constitute participation in an irregular procedure and would prejudice our rights."

2.6 Notwithstanding the position of the 1st Respondent, the continuation of the review proceedings proceeded on 23 May 2025 with the Applicant and other interested parties in attendance.

2.7 While the Review Panel respects the views of the 1st Respondent, it is of the considered opinion that the Respondent has misapplied the doctrine of *functus officio*. In the context of administrative quasi-judicial bodies, a decision is not deemed final until it has been communicated to the affected parties. Therefore, the Review Panel retained jurisdiction over the matter.

- 2.8 The Review Panel was not *functus officio* (our emphasis) as it had not issued an order, let alone a final order with any binding or dispositive effect on the matter. As highlighted in *Hewitt v President* (para 59), there was no final determination, and accordingly, no final legal consequence.
- 2.9 Even assuming a decision had been made, the absence of communication renders it legally ineffective. In any event, the Review Panel retains jurisdiction under Regulation 44, as confirmed by the High Court in the matter of *MVA v The Chairperson of the Review Panel* (para 37). The judgment emphasized that where a public body is legally authorized, either expressly or by necessary implication, to revisit its decisions, the doctrine of *functus officio* does not apply.
- 2.10 Furthermore, the court in that matter recognized that the legislature explicitly empowered public entities to reconsider their own decisions under Section 55(4A) of the amended Act. Therefore, the Review Panel's authority to undertake a review is firmly grounded both in the governing regulations and the Act itself.
- 2.11 Furthermore, the 1st Respondent's assertion that the remedial steps taken by the Review Panel are unsupported by the Act is overly rigid. The very same Act is underpinned by the principles of fairness, accountability, and transparency, which the Review Panel sought to uphold by ensuring the 1st Respondent had an opportunity to be heard.
- 2.12 Accordingly, the Review Panel maintains that while an administrative oversight did occur, it was appropriately and lawfully cured by extending an opportunity for the 1st Respondent to be heard.
- 2.13 The 1st Respondent, by its own volition, chose not to avail itself of this opportunity. However, to have concluded the matter without providing such an opportunity would have amounted to an injustice and a breach of procedural fairness.

3. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICATION BY THE APPLICANT

- 3.1 The Applicant claimed that the 1st Respondent recorded the Applicant's bid in their Executive Summary as responsive.
- 3.2 It further stated that the having perused the executive summary, it was clear that the Applicant was the lowest evaluated substantially responsive bidder and should get awarded the contract, being the lowest evaluated substantially responsive bidder within the mean of the received bids.
- 3.3 The Applicant alleged that the 1st Respondent does not produce a table to show how all the bids compare to each other when calculating the Mean, excluding the provisional sum and the VAT. It further produces a table to show that even on the wrong calculation, the 1st Respondent is wrong in its instance to award the bid to the 2nd Respondent.

- 3.4 The Applicant claimed that the 1st Respondent statement to say that “ *the individuals bid for SME’s and Main contractors were compared against the mean of the individuals bids*” is not correct as the bid price is an Overall Joint Bid Price for all the bidders and what matters is the overall joint bid price, and that is what is used to compare the different bids.
- 3.5 The Applicant indicated that the 1st Respondent’s response that stated it needs to update the executive summary to include the alleged calculations is impermissible and cannot change the executive summary without being ordered to reconsider the bids (*functus officio* principle).

4. POINTS IN LIMINE

- 4.1 As a matter of procedure and before the merits of the matter could be heard, the Chairperson requested the parties to raise any points *in limine*.
- 4.2 The Applicant raised a preliminary point in relation to the submission of the 1st Respondent’s replying affidavit in terms of Regulation 42(4). It is alleged that the 1st Respondent filed its replying affidavit outside the prescribed two (2) days referred to in the Regulations.
- 4.3 The Applicant stated that it had served its review application on the 1st Respondent on 28 April 2025 via email, with a hard copy delivered to the 1st Respondent’s premises on 29 April 2025. Therefore, the 1st Respondent ought to have filed its Replying Affidavit with the Review Panel at least by 30 April 2025.

5 REVIEW PANEL RULING ON THE POINT IN LIMINE

- 5.1 The Review Panel, having considered the evidence tendered into the record by the Applicant, upheld the point raised. The evidence shows that the 1st Respondent was indeed served on 28 April 2025 via email, and such service was acknowledged by a certain Julia Akweenyanga of the 1st Respondent on the same day.

6 APPLICANT’S SUBMISSION AT THE REVIEW PANEL HEARING:

- 6.1 The Applicant invited the Review Panel to the Executive Summary of the Bid Evaluation Report, in particular to paragraph 8, wherein a price comparison for substantially responsive bids was demonstrated. The Applicant was listed as number one (1) in the list among the five bidders. It is therefore a common cause that the five (5) listed bidders were regarded as responsive.
- 6.2 The Applicant submission is that “responsive”, in terms of the Act, is defined to mean responsive to the basic requirements of a bid regarding the ability to perform and complete on time. Therefore, it is safe to say that all five listed bidders were found to have the ability to perform and complete the work on time.

- 6.3 Furthermore, the Applicant refer to section 55 (1) of the Act which states that- *“the Board or a public entity must award a procurement contract to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the pre-qualification or bidding documents, following the steps outlined in subsections (3) and (4)”*.
- 6.4 Therefore, in line with the said provision, the public entity was bound to award the bid to the lowest substantially responsive bidder, which in this case would have been the Applicant.
- 6.5 The Applicant further stated, in terms of the bid requirements, it was indicated that bids must be within the 10% range of the mean. During the reconsideration stage, the 1st Respondent the Mean excludes the provisional sum and the VAT, which allegedly brings the Applicant’s bid amount to N\$85 712 755.82.
- 6.6 The Applicant indicated that the 1st Respondent did not produce a table to show how all the bids compare to each other when calculating the Mean, excluding the provisional sum and the VAT.
- 6.7 The Applicant demonstrated that if the mean of the received bids being utilised is the one which excludes provisional sum and VAT, the bidders' price to be measured should be the same. In this regard, the Applicant's bid price, which excludes provisional sum and VAT, is N\$ 78,947,494.88. which remains the lowest evaluated substantially responsive bid and within the threshold as per the ITB 33.4(a)
- 6.8 Concluding this matter, the Applicant submits that the 1st Respondent is wrong, the Applicant ought to be selected for the award because its price is the lowest substantially evaluated bid, lower than the selected bidder. Even on the wrong formula, the 1st Respondent moves to introduce, the Applicant will still be the lowest evaluated substantially responsive bidder and should be selected for award.
- 6.9 The Applicant’s submission is that the 1st Respondent violated the provisions of section 55(1) of the Act by choosing the successful bidder, which was not the lowest in the process. Therefore, as a consequence, the Applicant prays that the Review Panel correct and sets aside the notice of the selection of the award and or refer the matter back to the public entity with specific instructions that is to comply with the provisions of section 55 (1) of the Act.

7 4th RESPONDENT’S SUBMISSION AT THE REVIEW PANEL HEARING:

- 7.1 The 4th Respondent indicated that it fully supports the Applicant’s review application and further submits that the prayers by the Applicant be upheld.
- 7.2 Furthermore, the 4th Respondent submitted that one of the listed subcontractors in the name of Purity Investments is not a Newcomer SME, and this is contrary to the bid requirement.

8 FINDINGS OF THE REVIEW PANEL



Having considered the evidence filed as part of the record and the oral submissions, the Review Panel made the following findings:

- 8.1 That the 1st Respondent filed its replying affidavit late. Therefore, the application is to be regarded as unopposed.
- 8.2 That, according to the Executive Summary, the Applicant is substantially responsive, which means the public entity ought to comply with section 52 (9) of the Act when it evaluates the Applicant's bid and equally ought to comply with section 55 (1) of the Act.
- 8.3 That the Executive Summary contradicts the Bid Evaluation Report, stating under 3.3 that the Applicant is technically unable to successfully perform the contract because of major shortcomings in the site personnel and equipment, and was therefore disqualified.
- 8.4 8.4 That, according to the Bid Evaluation Report 3.2.3 and 3.3, all other bidders-including the successful bidder-should have been disqualified because they were more than 10% lower than the mean of the received bids or not being technically compliant.
- 8.5 That the public entity ought to comply with section 52 (9) of the Act, when it evaluates the Applicant's bid and equally ought to comply with section 55 (1) of the Act.

9 DECISIONS OF THE REVIEW PANEL

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

- 9.1 That, in terms of section 60 (c) of the Public Procurement Act, 2015, as amended, the Review Panel sets aside the Notice for selection of Award;
- 9.2 That in terms of section 60 (d) of the Public Procurement Act, 2015, as amended, the Review Panel directs the public entity to proceed in the manner that complies with the Act. Further, order that the public entity re-evaluate the Applicant's bid in line with section 52 (9) of the Act.
- 9.3 The public entity must provide proof of implementation of this Order to the procurement policy unit within thirty (30) days from the receipt of this Order, with a copy of such a report sent to the Review Panel Secretariat.
- 9.4 The effective date of this Order is 23 May 2025.



Paulina Kandali Lyambo
Chairperson
CHAIRPERSON (for this matter)