



**REPUBLIC OF NAMIBIA**  
**MINISTRY OF FINANCE**

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**PUBLIC PROCUREMENT REVIEW PANEL**

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING**  
**HELD ON 20<sup>th</sup> June 2022**  
**IN THE MATTER BETWEEN**

**BA SHARON TRADING ENTERPRISES CC**  
**ADAPTIC INVESTMENT CC**  
**AND**

**FIRST APPLICANT**  
**SECOND APPLICANT**

**CENTRAL PROCUREMENT BOARD OF NAMIBIA**  
**AND 47 OTHERS**

**FIRST RESPONDENT**

**IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC  
PROCUREMENT ACT, ACT 15 OF 2015**

**BID NO: NCS/OAB/CPBN-02/2021, PROCUREMENT OF PROVISION OF CLEANING  
SERVICES FOR THE UNIVERSITY OF NAMIBIA (UNAM)**

**Present:** Rainer Trede (Chairperson) with, Gilbert Habimana, Brown Mutrifa,  
Hellen Amupolo and Tulimeyo Kaapanda

**Heard : 20 June 2022**  
**Decided : 20 June 2022**

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**REVIEW PANEL ORDER**

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The Review Panel meeting held on 20<sup>th</sup> June 2022, was conducted via physical and virtual modes. Having heard Ms. Sharon Zimbo Limbo for the First Applicant, Mr. Benedictus Ngurimuye Ngairorue for the Second Applicant and Ms. Nicola Davids on behalf of the First Respondent, and other interested parties who were joined in terms of Regulation 42(5) (a) of the Regulations (hereinafter referred to as the "Regulations") of the Public Procurement Act, 2015 (Act No. 15 of 2015) (hereinafter referred to as the "Public Procurement Act"); and

Having read the application for review in terms of Section 59(1) of the Public Procurement Act, 2015 (Act 15 of 2015) hereinafter referred to as "the Act", read with Regulation 42 of the Public Procurement Regulations, and having examined other documents filed as part of the records, the Review Panel found the facts and subsequently make the order hereunder:

**1. GROUNDS FOR THE REVIEW APPLICATIONS**

**1.1 First Applicant**

The Applicant (BA Sharon Trading Enterprises cc) stated that the reason for its disqualification is that the bidder did not submit any letter of intent from any registered financial institution to the value of three (3) months working capital or provide proof of such amount in the bank in the form of bank statements, as stipulated under the Financial Evaluation Criteria, Item 5.1 page 37 of the bid document.

The First Applicant submitted that the letter of intent was attached as per the proof attached to its application form.

Furthermore, the First Applicant mentioned that more than one lot was allocated to one company in contrast to page 32 of the bidding documents that only one lot will be allocated to one company.

The First Applicant further requested the Review Panel to scrutinize all selected bidders' bid documents to see whether they have indeed submitted the required letters of intent and whether cleaning services are listed in their founding statements as types of services they offer.

Relief sought by the First Applicant:

Order in terms of Section 60 (f) of the Public Procurement Act.

## **1.2 Second Applicant**

The Applicant (Adaptic Investments cc) stated that the reason for its disqualification is that the bidder's letter of intent from a registered financial institution covered only the value of one (1) months working capital and not three (3) months as stipulated under the Financial Evaluation Criteria, Item 5.1 page 37 of the bid document.

The Second Applicant alleged that its bid has been disqualified in an unjustly, incorrect and procedurally unfair manner. The Second Applicant quoted Section 2 of the Public Procurement Act 2015, (the objects of the Act) *"to promote integrity, accountability, transparency, competitive supply, effectiveness, efficiency, fair dealing, responsiveness, informed decision making, consistency, legality and integration in the procurement of assets, works and services"*.

The disqualification does not consider that on 14<sup>th</sup> March 2018 the Minister of Finance granted an exemption in terms of Bid Security and that the letter of intent should have been a requirement only after the award of the awarded bidder.

The Applicant further stressed that the First Respondent should have obtained an authorization from the Procurement Policy Unit for them to deviate from the standard bidding document.

Relief sought by the Second Applicant:

The Second Applicant requests that the notice for selection of award should be set aside and the review application should be upheld.

## **2. ARGUMENTS OF THE FIRST RESPONDENT**

The First Respondent stated that they have evaluated all bids in accordance with the criteria and methodology set out in the bid documents and in compliance with Section 52 (9) of the Public Procurement Act, as such the Applicants disqualification is correct and procedurally fair.

In terms of ITB 5.5 (e) in the bidding data sheet and evaluation criterion 5.1 bidders were required to provide a letter of intent from any registered financial institution to the value of three (3) months working capital or to provide proof of such amount in the bank in the form of bank statements.

In amplification of the denial, the First Respondent stated that the First Applicant submitted a letter of intent from First National Bank of Namibia for the issuance of performance security and a letter confirming a bank account which did not meet the requirements set out under the evaluation criterion 5.1.

The Second Applicant provided a letter of intent from the First National Bank to supply the Applicant with a credit facility covering one (1) month working capital and not three (3) months as required under the Financial Evaluation Criteria, Item 5.1. Thus the Second Respondent did not meet the requirements set out under the evaluation criteria 5.1.

The First Respondent mentioned that Regulation 32 (e) allows public entities to request any other information needed to assess the economic and financial standing of the bidder. As such, the Second Applicant's contention that the First Respondent must obtain approval from the Procurement Policy Unit when requesting additional financial information in the bidding document is without merit. The request to provide a letter of intent from any registered financial institution to the value of three (3) months working capital or to provide proof of such amount in the bank in the form of bank statements is catered for under Regulation 32 (e).

Furthermore, the First Respondent stated that the financial statements submitted by the Applicants are not tantamount to the required bank statements. The bank statements serve the purpose of proving that bidders have three (3) months working capital in the bank account.

The First Respondent further explained that the evaluation criteria on page 32 of the bidding document provides that while only one lot will be allocated per bidder, in cases where there are no compliant bidders remaining with respect to any given lot, the First Respondent may award more than one lot to the lowest evaluated and substantially responsive bidder. It is for this reason that some of the successful bidders were allocated more than one lot.

Regarding the exemption grounded by the Minister the First Respondent explained that the exemption does not find application under the circumstances as bidders were not required to submit a bid security. Bidders were, however, required to demonstrate through bank statements and letters of intent that they meet the financial requirement of having three (3) months working capital.

### **3. FINDINGS OF REVIEW PANEL**

The Panel found out that the bids were evaluated in accordance with the methodology and criteria set out in the bidding documents;

The Panel found out that the First Respondent violated Regulation 42 (4) when it failed to file with the Review Panel within two days a replying affidavit to the allegations by the First Applicant (BA Sharon);

The two Applicants violated Regulation 42 (3) when they failed to serve copies of the review application on any other interested parties;

The Panel further established that the letter of intent required under ITB 5.5 differs from the Bid Security, which the bidders are exempted from. Thus, both Applicants did not meet the requirements of the evaluation criteria.

### **4. DECISION OF THE REVIEW PANEL**

In the premise, the Review Panel makes the following order:

5.1 in terms of Section 60 (e) of the Public Procurement Act, 15 of 2015 the Panel confirms the decision of the Board.

  
**DR. RAINER TREDE**  
**CHAIRPERSON: REVIEW PANEL (I.R.O. THIS MATTER)**

