



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 31 AUGUST 2022
IN THE MATTER BETWEEN

ALV Consulting Engineers Joint Venture ENGCO

Applicant

AND

Municipality of Grootfontein

1st Respondent

WSL Engineering

2nd Respondent

Artee Project Engineers

3rd Respondent

CEPM & Partners Engineers

4th Respondent

Tulipamwe Consulting Engineers

5th Respondent

Ongwediva Consulting Engineers

6th Respondent

Lithon Project Consultants

7th Respondent

DEKA Consulting Engineers

8th Respondent

Naba Consulting Engineering

9th Respondent

And 8 other Respondents

IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC PROCUREMENT ACT, 2015 (ACT NO. 15 OF 2015)

BID NO: SC/RFP/GRFMUN-T-08/2022: - REQUEST FOR PROPOSAL FOR CONSULTANCY SERVICES FOR DETAILED DESIGN, PROJECT MANAGEMENT, CONTRACT ADMINISTRATION AND SITE SUPERVISION OF EXISTING & NEW INFRASTRUCTURE: SEWER, WATER RETICULATION, ROADS, STORM-WATER, SEWER OXIDATION POND MANAGEMENT, GEOTECH, ELECTRICAL RETICULATION, ROADS, MECHANICAL AND STRUCTURAL ENGINEERING FOR A PERIOD OF THREE (3) YEARS ON AD-HOC BASIS

Present: Tulimeyo Kaapanda (Chairperson) Hellen Amupolo, Brownny Mutrifa, Selma-Penna Utonih and Rainer Trede

Heard: 31 August 2022

Decided: 31 August 2022

REVIEW PANEL ORDER

A hybrid hearing was held, using physical and virtual modes.

Having heard **Mr. Alexandre Frederico**, for the Applicant, **Mr. Henry Homateni Shimutwikeni and Mbushandje Ntinda** on behalf of the 1st Respondent, and other interested parties who were joint in terms of sub-regulation 42(5)(a) of the Regulations (hereinafter referred to as “the Regulations”) to the Public Procurement Act, 2015 (Act No. 15 of 2015) (hereinafter referred to as “the Public Procurement Act”); and

Having read the applications 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.

1. APPLICANT’S GROUNDS FOR REVIEW

1.1 The Applicant alleged that the public entity unfairly disqualified the bid in question as neither the bidding document nor the Notice to bidders stated that the reference letters should be certified, therefore this is not a disqualifying criteria.

1.2 Further, that in the absence of declaration of interest by the founding members of the Applicant’s competitor (WSL), it is construed that part of the WSL Engineering and Consulting ownership belongs to one Silver Wayiti, who is also serving as an employee for CENORED which is in the Applicant’s own knowledge a subsidiary to Grootfontein Municipality. The Applicant further alleged that they believe that the Municipality has conflicted its interests by issuing such appointment without having confirmed the ownership of the said firm from BIPA.

2. APPLICANT DURING THE PROCEEDINGS

2.1 The Applicant claimed that the Notice did not specify that the reference letters should be certified and made reference to Instruction to Consultants (ITC) 3.6 (iii), stating that their understanding was that the completion certificate should be certified and not the reference letters. He maintained that there is nowhere does it refers to dully certified reference letters but rather, a completion certificate of the completed projects duly attached and certified by a Commissioner of Oath.

2.2 The Applicant further referred the Panel to the Notice to bidders No.2 when the amendment was made to Clause 3.6 (iii) of the data sheet which reads as follow: *"The requirement is that Consultants must obtain and be in possession as part of this bid, any reference letters for previously completed projects. Such letters are obtainable from the clients that the Consultant rendered service for"*.

2.3 The Applicant alleged that the public entity did not consider the Instruction to Consultants 1.6.1 (iii) on page 7 of the bidding documents during the evaluation and examination of bids which requires "a consultant (including its personnel and Sub-Consultants) that has a business or family relationship with a member of the client's staff who is directly or indirectly involved in any part of the preparation of the Terms of Reference of the assignment, the selection process for such assignment, or supervision of the contract, shall not be awarded a contract, unless the conflict stemming from this relationship has resolved in a manner acceptable to the Client throughout the selection process and the execution of the contract".

2.4 The Applicant is suspicious that the Consultant selected for award is owned by a Cenored executive member who is possibly involved in the approval of the Grootfontein Municipality's electrical engineering designs, hence the perceived conflict of interest.

3. THE 1ST RESPONDENT'S RESPONSE ON THE APPLICATION

3.1 The 1st Respondent stated that bids were evaluated in accordance with Instruction to Consultants (ITC) 3.6, further maintaining that ITC 3.6 (iii) requires the reference letters to be accompanied by completion certificates and both items should be certified.

3.2 Regarding the issue of the conflict of interest allegations, the 1st Respondent stated that it is up to the bidders themselves to declare the conflict of interest and it was not the public entity's duty to confirm whether bidders are conflicted. CENORED is not a subsidiary of the Municipality of Grootfontein, however the Municipality of Grootfontein as a Local Authority has a minority shareholding in CENORED. The alleged conflict is thus insignificant, and it is on those basis the Respondent submit that there is no conflict of interest.

3.3 The 1st Respondent argued that the Application is not properly served before the Review Panel, as the interested parties were not served and that the Applicant contravened Regulation 42 (3) of the Public Procurement Regulations.

4. FINDINGS OF THE PUBLIC PROCUREMENT REVIEW PANEL

From the documents presented to the Review Panel and the review hearing proceedings, the following findings are deduced:

4.1 That as per ITC 3.6 (iii), it is correct for the Applicant to have understood it the way they did. Further, a notice to Bidders no. 2 was an amendment to ITC 3.6 iii, and that too did not mention certification of reference letters. The public entity therefore violated Section 52 (9) when the Bid Evaluation Committee evaluated bids not in accordance with the criteria and methodology set out in the bidding documents.

4.2 On the issue of conflict of interest, the public entity has not proven how it satisfied itself on the requirement under Instruction to Consultants 1.6.1 (iii) on page 7 during the bid evaluation process. Even upon receiving the Application for Review, there were no actions to verify the allegations of perceived conflict of interest levelled by the Applicant.

4.3 The Review Panel has noted that there was non-compliance with Regulation 42 (3) by the Applicant. Bidders were however made aware of the review application when joint by the Review Panel Secretariat in terms of sub-regulation 42(5)(a).

5. DECISION OF THE PUBLIC PROCUREMENT REVIEW PANEL

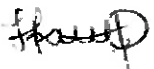
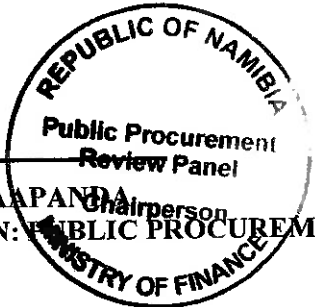
Based on the above findings, the Review Panel makes the following order:

5.1 In terms of Section 60(c) of the Public Procurement Act, 2015 (Act No. 15 of 2015), the Review Panel hereby set aside the decision of the public entity and refer the matter back to the public entity for reconsideration.

5.2 The public entity must re-evaluate all bids as per the criteria and methodology set out of the bidding documents.

5.3 BEC must put themselves at ease in term of ITC 1.6.3 on page 7 of the bidding documents

5.4 That this Order is effective from 31 August 2022.



TULIMEYO KAAPANDA
CHAIRPERSON: PUBLIC PROCUREMENT REVIEW PANEL (i.r.o. this matter)