



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW HELD ON 29 MARCH 2022

IN THE MATTER BETWEEN

Office of the Judiciary

Applicant

AND

Tekmak Investment

Respondent

IN A REVIEW APPLICATION MADE IN TERMS OF REGULATION 46 (1) OF THE PUBLIC PROCUREMENT ACT, ACT 15 OF 2015

BID NO. G/RFQ/21-13/2021 : SUPPLY AND DELIVERY OF CLEANING MATERIAL IN WINDHOEK, BID NO. NCS/IQ/21-14/2021/22 PROCUREMENT OF A SERVICE TO REPLACE A DAMAGED LCD SCREEN OF A LENOVO LAPTOP, BID NO.G/RFQ/21-22/2021/22 SUPPLY AND DELIVERY OF 70% ALCOHOL SANITIZER AEROSOL AREA FOGGER AND BID NO.G/IQ/21-11/2021/22 SUPPLY AND DELIVERY OF REFRESHMENTS

Present: Selma-Penna Utonih (Chairperson), Tulimeyo Kaapanda, Brownly Mutrifa, Rainer Trede and Mary Shiimi .

Heard : 29 March 2022

Decided 29 March 2022

REVIEW PANEL ORDER

The meeting took both the physical and virtual modes.

Having heard **Mr. Johannes Shikongo**, for the Applicant, **Mr. Nicanor Shingo** for the Respondent who were joined in terms of Regulation 48(1) of the Regulations (hereinafter referred to as the Regulations) to the Public Procurement Act, No. 15 of 2015 (hereinafter referred to as the Act) and having read the applications for suspension and debarment in terms of Section 68 of the Public Procurement Act and other documents filed as part of the record, the Review Panel made the following findings and subsequent order hereunder towards the end.

1. GROUNDS FOR REVIEW

The ground for the request for the suspension and debarment is misconduct relating to execution of procurement contracts as per Section 68(1) (d) of the Public Procurement Act, 15 of 2015.

The Office of the Judiciary has awarded contracts to Tekmak Investment cc and through its contract performance monitoring system; the Office has observed a trend of Tekmak Investment cc breaching terms and conditions of procurement contracts awarded. The said supplier indicates long delivery periods in its bids, yet it failed to keep up with such delivery periods. This has negatively affected the performance as well as contributing to low expenditure of the Office, since resources and time are wasted during the process of following.

The fact that the supplier failed to deliver the goods defeats the objective of the Office to ensure that materials and supplies are readily available at courts when needed. Therefore, the supplier has breached the contracts terms and conditions for failing to fulfil the contractual obligations.

2. THE APPLICANT

The Applicant enlightened the Panel that on 10th September 2021 the public entity awarded a contract to Tekmak Investment cc for cleaning material for Magistrate's Offices. The Purchase Order with the Contract amount of N\$80,942.75 was issued on 13th October 2021. The Applicant further indicated that on 25th October 2021 (the agreed delivery date) the Supplier wrote to the public entity indicating that there was a delay in delivery of cleaning material due to high demand of cleaning products as a result of Covid-19.

The Applicant further informed the Panel that the public entity wrote a letter to the Respondent on 16 November 2021 indicating the deadline for delivery of cleaning material by latest 19 November 2021. However, the Respondent (Tekmak Investment cc) did not deliver as per the deadline provided and it did not make an effort to communicate. Thus, on 3rd December 2021 the Applicant wrote another letter to the Respondent informing it to return the Purchase Order but the Respondent failed to comply.

Without any efforts to respond to the letters or communicating to the public entity on the issue of delivery, the Respondent delivered the cleaning materials issued under Purchase Order No. 39944 in a full amount of N\$30,848.75 on 24 December 2021.

On 07 December 2021, the public entity followed up on the delivery of the service to replace the laptop screen since it was overdue by 2 weeks and 3 days. The Respondent then responded on the same day (07 December 2021) that it was done with the screen replacement and would deliver soon as possible. However, the laptop screen was only delivered on 20 December 2021.

The Applicant further indicated that the Office had a challenge obtaining the Purchase Order No. 40277 and invoice from the Supplier to facilitate the payment of refreshments delivered. It was later submitted together with the invoice on 27 December 2021.

Regarding the procurement of sanitizer a delivery on 30 December 2021 was agreed. The Applicant tried to get hold of the Respondent during the week of 03 January 2022 as well as 11 January, but the latter was not answering the calls. The goods were finally delivered.

3. THE RESPONDENT

The Respondent in its presentation indicated that on 18 November 2021, it communicated to the Applicant in a letter stating that it was unable to complete the delivery of the cleaning material by the date extended to 19 November 2021 due to unavailability of stock from its Suppliers. The Respondent further stated that the Purchase Order have been partially completed and expects to deliver after the 28th of November 2021.

The Respondent further emphasized that having due regard to the fact that some of the components of cleaning materials are not locally manufactured, the Covid-19 wave severely affected the process of manufacturing products however, cleaning Suppliers were severely affected due to lockdowns and regulations in the supplying countries.

Furthermore, the Respondent stressed that it had an obstacle in delivering especially for the masks which it supplied to the public entity and were send back as it was not exactly the one which the public entity requested for .

At all times the Respondent communicated to the Applicant that the delivery period for a screen from its supplier was between 4-8 weeks. The delay was occasioned by the fact that the Respondent had to source a protector from another supplier due to the unavailability of stock from the intial supplier.

The Respondent in its final remarks apologized to the public entiy and indicated that it was out of its control as these materials are not manufactured in Namibia. The Reprspondent further asks that they should be given another chance.

2. FINDING(S) OF THE REVIEW PANEL

Having heard both Parties, the Review Panel resolved to first settle the question as to why Applicant didn't resort to the next lowest responsive bidder. The public entity had a latitude to cancel the Purchase Order and take a decision to move to the next bidder before the expiry of the quotations and whether the public entity received all the goods it requested from the Supplier (Tekmak Investment cc).

The Review Panel found that the channel of communication within the public entity is challenged, in that the user department was communicating straight with the bidder instead of Procurement Management Unit (PMU) which procures on behalf of any other departments within the public entity.

The Panel found out that all items were delivered and the public entity failed to cancel the Purchase Orders.

The Panel further found that the special conditions under delivery and documents GCC 13. 1 in the bid document opens to more interpretations,as it gives provision for deviation in delivery.

"deviation in delivery shall be considered if such deviation is reasonable"

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

That on the strength of Section 68(1)(d) of the Public Procurement Act No.15 of 2015, the Respondent is suspended from participating in procurement activities with all public entities , effective from 29 March 2022 to 30 June 2022.



SELMA-PENNA UTONIH
CHAIRPERSON: REVIEW PANEL (i.r.o. this matter)

