



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW HEARING HELD ON 08 MARCH 2022

IN THE MATTER BETWEEN

VIRTUA TECHNOLOGIES ICT INNOVATION

GREEN ENTERPRISES SOLUTIONS (PTY LTD

FIRST APPLICANT

SECOND APPLICANT

AND

TELECOM NAMIBIA LIMITED

SATEC

FIRST RESPONDENT

SECOND RESPONDENT

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

**BID NO: NCS/ONB/TN-163/2021: SUPPLY, DELIVERY, INSTALLATION,
COMMISSIONING AND MAINTENANCE OF OPERATIONS AND BUSINESS
SUPPORT SYSTEMS (OSS/BSS) TO TELECOM NAMIBIA**

**Present: Brownny Mutrifa (Chairperson) with Lukas Kudumo Siremo, Hellen
Amupolo, Gilbert Habimana and Mekondjo Nghipandulwa concurring.**

**Heard : 08 March 2022
Decided : 08 March 2022**

REVIEW PANEL ORDER

Having heard **Ms. Hilma Antindi**, the representative of the First Applicant, **Mr. Japie Jacobs**, the representative of the Second Applicant, **Mr. Appolos Shimakeleni**, the representative of the First Respondent and other interested parties joined to this proceeding in terms of Regulation 42(5) (a) of the Public Procurement 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 application for review and other documents filed as part of the record, the Review Panel found the following and subsequently made the order hereunder:

FIRST APPLICANT'S GROUND FOR REVIEW APPLICATION

The First Applicant stated that the criteria 2.2 of the bid submission form has been completed and signed by a person or persons duly authorised to bind the bidder to the contract as per ITB 13.1 (a) and 19.2 (all bidders). It is officially being submitted that the party that signed the submission form is duly authorised to act on behalf of the bidder, as he is an employee of the bidder, who procedurally signs on behalf of all bids for the bidder and hence can bind the bidder to the contract.

The Applicant further stated that Tecnotree their partnering company gave Virtua Technologies the Authority via a Power of Attorney authorising Virtua Technologies' to act on behalf of the joint venture as the leading company, as per the joint venture teaming Agreement between the parties. Virtua

Technologies then gave Shitongeni Kakehongo the authority to sign and contract on behalf of the joint venture and to bind the parties to the contract via their power of attorney.

SECOND APPLICANT'S GROUND FOR REVIEW APPLICATION

The Second Applicant stated that they partnered with Formula Telecom Solutions Ltd (FTS) to provide the best solution for this tender to facilitate such partnership, Formula Telecom Solutions Ltd and admitted that applicants concluded to pre-joint venture agreement.

The Second Applicant indicated that they submitted all the required documents and moreover could not give the comprehensive write up on the licence because their licence was perpetual.

The Applicant further stated that TelOne, Telnet and Vodafone each of whom submitted reference letters are the clients of Formula Telecom Solutions and KNO and are therefore able to provide references in relation to services which Formula Telecom Solutions are rendered to each of them. The three references which were provided to the First Respondent therefore meet the bidding requirements (Annexure B 4.2) and are operational in Fixed Line Telco Operational environments. Upon a proper consideration of the joint venture agreement, read together with the three reference letters submitted sufficiently covered the joint venture as a whole and met the tender requirements.

The Second Applicant also alleged that the bid document was tailor made to suit only one bidder, since Telecom had included a requirement which was not part of the original bid which was initially cancelled. It further stated that the requirement to have API certified by TN Forum was only met by one bidder (the Second Respondent) which is an indication of favouring them considering that they acquired this certification few days before the bid was advertised.

FIRST RESPONDENT

The First Respondent stated that First Applicant submitted a bid as part of a joint venture called Green Enterprise Solutions (Pty) Ltd joint venture Formula Telecom Solutions Part of Magic Software "FTS-GES joint venture".

The First Respondent further stated that the Second Applicant was not a bidder in its own right, it was part of a joint venture which submitted a bid.

The First Respondent stated that the two Applicants did not submit bid as distinct and separate sole private companies and were thus not bidders. It was open to both Applicants to submit their bids independently, however they chose to submit bids as part of a Joint venture.

The First Respondent indicated that the Second Applicant failed to provide the required references letters and what was attached was too generic and did not indicated the product that they were offering. That only one reference letter was applicable to the product that was being offered. In addition, the First Respondent also indicated that, the API certification was met by 12 bidders and it is only the First and Second Applicants who did not meet that criteria, although the requirements was removed during clarifications.

The First Respondent stated that the First Applicant failed to meet the bid requirements including the comprehensive write up of the licence product, only covered 4 items vis-à-vis 10 items which were required to be shown and elaborated in the technical proposal as per criteria 2.15 and ITB 16.2(c) of the bid document. The First Applicant failed to meet criteria 2.18 as they did not provide a confirmation letter for integration and interoperability.

FINDINGS OF THE REVIEW PANEL

Based on evaluation criteria 2.15 and ITB 16.2(c) of the bid document, the Review Panel found that the First Applicant covered 8 items and not 4 items as indicated by the First Respondent. However, it was a requirement to cover all 10 items in the technical proposal. In addition, the representations about the comprehensive licence write up and confirmation letter as made by the First Respondent were found to be factual.

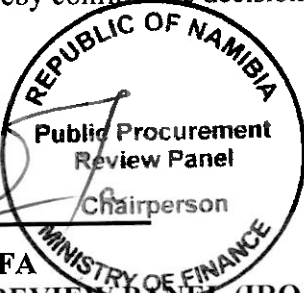
From the information provided and representations made, the Review Panel found that the Second Applicant did not provide all the required reference letters with the needed product details, except one that met the criteria as stated under evaluation criteria 4.2 of the bid document.

Overall, the Review Panel found that both the First Applicant and Second Applicant did not comply with the requirements in the Instruction to Bidders and failed to meet all the mandatory requirements of the bid evaluation criteria.

DECISION OF THE REVIEW PANEL

In the result the Review Panel make the following order:

In the premise and in accordance with Section 60(a) of the Public Procurement Act, 2015 (Act No. 15 of 2015), the Review Panel hereby dismiss the two review applications and in terms of Section 60(e), the Review Panel hereby confirm the decision of the public entity.



BROWNY MUTRIFA
CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)