



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 03 JANUARY 2023**

IN THE MATTER BETWEEN

NARIRONGO INVESTMENTS CC

APPLICANT

AND

**MINISTRY OF AGRICULTURE, WATER AND LAND
REFORM
AND 70 OTHER RESPONDENTS**

RESPONDENT

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

BID NO:

**W/ONB/37-01/2022 SUPPLY AND DELIVERY, REHABILITATIONS/
CONSTRUCTIONS OF GAME AND STOCK PROOF FENCING AT FARMS: SUMAS
NO. 752; OTJOZONDJUPA REGION, PORTION 1 OF FARM GOABEB NO.63;
ERONGO REGION, RUSTING NO.416; KHOMAS REGION AND KAUKURUS
PORTION N (LUISENDA) OMAHEKE REGION**

**Coram: Michael Gaweseb (Chairperson), with Donè Brinkman, Fillemon Wise
Immanuel, Mekondjo Katunga and Lukas Kudumo Siremo.**

Heard: 03 January 2023

Decided: 03 January 2023

ORDER

The meeting took both the physical and virtual modes.

Having heard **Mr. David Amutenya**, for the Applicant, **Ms. Lucy Naris** for the Respondent, and other interested parties who were joined in terms of Sub-Regulation 42(5) (a) 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 Application for Review and other documents filed as part of the record, the Review Panel made the following findings and subsequent order.

1. Grounds for review

The Applicant stated that the decision of the Public entity to disqualify the Applicant is based on the wording of “credit facility” letter.

2. The Applicant during the proceedings

The Applicant further stated that the Executive summary was initially not shared with the unsuccessful bidders, had the company that appealed the decision for award not done so, the Applicant would not even have known that it was deemed irresponsible for a document that was on file and provided.

The Applicant stressed that there is an exemption with regard to application of Bid Security or Bid Securing Declaration (Bank guarantee) in terms of Section 45 of the Public Procurement

Act, the Bid security requirement has proven to be a limiting measure with regards to participation by small and upcoming entities.

In terms of Evaluation Criteria on page 32 of the bidding document, bidders are required to demonstrate access to or availability of financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments. The Applicant submitted a letter from FNB as per the format of the bank.

3. First Respondent

The First Respondent referred the Panel to Page 26 of the bid document and explained that point number nine (9) gives two options and that a bidder is supposed to either submit a letter from the commercial bank or a letter from material suppliers indicating sufficient credit facility in relation to the scope of the project.

4. Findings of the Review Panel

Having heard the Parties after all parties were afforded ample time, the Review Panel resolved first to settle the question of law of whether the bid in question is valid or not. It further made the following findings:

- The Review Panel established that violation of Section 52 (9) occurred in that the First Respondent's Bid Evaluation Committee failed to evaluate bids in accordance with the criteria and methodology set out in the bidding documents. One supposedly successful bidder Hungiimo used a letter with similarly vague "availability of credit facility". The public entity did not even interpret its own wording on "data form 15" correctly as it too uses such language as "maybe". They further accepted a letter from the Development Bank of Namibia while the bidding document requires such a letter from a "commercial bank". In any event the Minister of Finance as per the procurement act exempted public entities from regulation 7 (1) (a) through a letter dated 14 March 2018.

5. REVIEW PANEL DECISIONS

5.1 In terms of Section 60(c) of the Public Procurement Act No.15 of 2015, with the following instructions:

5.2 The Review Panel order that the First Respondent re-evaluate all bids in accordance with Section 52 (9).

5.3 And that all Notices for selection of awards are set aside.

5.4 The effective date of this order is from 03 January 2023.



MICHAEL GAWESEB
CHAIRPERSON: REVIEW PANEL (IN RE THIS MATTER)

