



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 12 JANUARY 2023**

IN THE MATTER BETWEEN

OMAMBUNDU SECURITY SERVICES

APPLICANT

AND

MINISTRY OF FISHERIES AND MARINE RESOURCES

1ST RESPONDENT

SECURITY TRAINING COLLEGE OF NAMIBIA

2ND RESPONDENT

IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC PROCUREMENT ACT, 2015 (ACT No 15 OF 2015), hereinafter referred to as “The Act”.

BID NO: NCS/ONB/022-01/2022/2023 – SUPPLY OF SECURITY SERVICES FOR THE MINISTRY OF FISHERIES AND MARINE RESOURCES

Coram: Paulina Kandali Iyambo (Chairperson), with Ehrenfried Honga, Donè Brinkman, Tulimeyo Kaapanda, and Gilbert Habimana concurring

Heard: 12 January 2023

Decided: 12 January 2023

ORDER

The meeting took both the physical and the virtual modes.

Having heard **Mr. Joel Heita**, for the Applicant, **Ms. Annelly Haiphene**, for the First Respondent, and other interested parties who were joined in terms of Sub-Regulation 42(5) (a) of the Public Procurement Act, 2015: Public Procurement Regulations (hereinafter referred to as “the Regulations”) 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 hereunder towards the end.

1. GROUNDS FOR REVIEW APPLICATION

- 1.1 The Applicant stated that the Notice for selection of award issued by the Ministry of Fisheries and Marine Resources on 15th December was not accompanied by the Executive Summary of the bid evaluation report as stipulated in Section 55 (4) (b) of the Act, and that the Applicant was not provided with a reason as to why its bid was not successful.

2. APPLICANT'S FURTHER GROUNDS STATED DURING THE HEARING PROCEEDINGS

- 2.1 The Applicant stated that on 16th December 2022, they have requested for an Executive Summary of the bid evaluation report via email. However, it was not provided to the Applicant. Instead, the First Respondent informed the Applicant that the Executive Summary will be uploaded on the Respondent's website.
- 2.2 The Applicant alleged that the Selected bidder's tendered amount was below the minimum wage in terms of Article 9 of the collective agreement to Security Industry dated 15th September 2017 (Government Gazette no. 6414) and in contravention of Written undertaking in terms of Section 138 of the Labour Act 2015 which forms a part of the mandatory requirement in the bidding document.
- 2.3 Further, that when it requested for the reconsideration, the First Respondent replied on 21 December 2022 stating that, the Ministry of Fisheries and Marine Resources' procurement team was on leave.

3. FIRST RESPONDENT'S RESPONSES TO GROUNDS FOR REVIEW APPLICATION

- 3.1 The First Respondent submitted an answering affidavit on 14th January 2023. Review Panel noted the late submission and opted to rely on Respondent's representations during the hearing.
- 3.2 The First Respondent in response to the allegations by the Applicant conceded that the Notice for selection of award was not accompanied by the Executive Summary as stipulated in Section 55 (4) (b) and stated that this was due to the fact that the Bid Evaluation Committee Chairperson did not submit a Summary but only submitted a Report.
- 3.3 The First Respondent further stated that the amounts on the Notice for selection of award are inclusive of VAT, although they are not included on the table of the said Notice.
- 3.4 The First Respondent conceded that its Bid Evaluation Committee did not commence with the process of examination and evaluation of bids within five (5) days after the opening of bids and stated that the commencement of Bid evaluation Committee could not take place within the prescribed period because they have other duties to attend to.
- 3.5 The First Respondent further, stated that it takes note of the minimum wage payable to employees and that it was not taken into consideration at the technical evaluation stage, although the written undertaking was signed and submitted by all bidders.

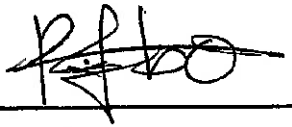
4. FINDINGS OF THE REVIEW PANEL

- 4.1 That the First Respondent violated Regulation 7 (2) when its Bid Evaluation Committee failed to commence with the process of examination and evaluation of bids within 5 days after the opening of bids;
- 4.2 Further that, the First Respondent erred when it opted to put on hold the whole procurement process and thus violated Section 1 (b) (i) of the Act as amended, which provides for the continuity of procurement functions even when the Accounting officer is not available.
- 4.3 The first Respondent, by accepting a bidder that tendered below the minimum wage defined by article 9 of the collective agreement to Security industry dated 15th September 2017 (Government Gazette no. 6414), violated section 138 of the labour Act 2015.
- 4.4 That the First Respondent failed to attach the evaluation Executive summary to the Notice for selection of award as per the requirements of Section 55 (4) (b) of the Act.
- 4.5 That the bid amounts on the Notice for selection of award does not corresponds to the amounts cited by the public entity.

5. DECISION OF THE REVIEW PANEL

In terms of Section 60(c) of the Public Procurement Act No.15 of 2015, the Review Panel refers the matter back to the First Respondent with the following instructions:

- 5.1 Set aside the previous Notice for selection of award and issue a correct Notice for selection of award in terms of section 55 of the Act as amended.
- 5.2 The First Respondent must ensure that the Notice for selection of award corresponds to the information provided by bidders and to the Executive Summary provided by the public entity.
- 5.3 The new notice for selection of award (executive summary part) must show that the First Respondent has correctly applied section 138 of the labour Act 2017 and the minimum wage attached to it.
- 5.4 The effective date of this order is from 12 January 2023.



PAULINA KANDALI IYAMBO
CHAIRPERSON: REVIEW PANEL (I.R.O. THIS MATTER)

