



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW HEARING

HELD ON 19 JANUARY 2023

IN THE MATTER BETWEEN

**FI TRADING ENTERPRISE CC &
AMAKHOMI INVESTMENT CC JV**

APPLICANT

AND

**OKAHAO TOWN COUNCIL
ETN TECHNICAL TRADING ENTERPRISES CC
JAMES & YOUNG TRADING ENTERPRISES CC
KAMBWA CONSTRUCTION (PTY) LTD
D-SQUARE TRADING ENTERPRISE CC
WECCA INVESTMENT
MAPERES INVESTMENT CC
SUPECO TRADING CC**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT
8TH RESPONDENT**

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

BID NO: W/ONB/OTC-02/2022/2023 – CONSTRUCTION OF OKAHAO SPORT FIELD – PHASE 01

Present: Hellen Amupolo (Chairperson), with Kenandei Tjivikua, Brownly Mutrifa, Gilbert Habimana, and Selma-Penna Utonih concurring.

Heard : 19 January 2023

Decided : 19 January 2023

REVIEW PANEL ORDER

The meeting took place using both physical and virtual modes.

Having heard Ms. R. Shipindo, representing the Applicant, and Mr. J. Jakob, representing the First Respondent; Having read the application for review in terms of Section 59(1) of the Public Procurement Act, 2015 (Act No. 15 of 2015) (hereinafter referred to as the “Act”), read with Regulation 42 of the Public Procurement Regulations: Public Procurement Act, 2015 (hereinafter referred to as the “Regulations”); and Having further perused other documents filed as part of the records, the Public Procurement Review Panel made the following findings and the subsequent Order;

1. APPLICANT’S GROUNDS FOR THE REVIEW APPLICATION

1.1 The Applicant stated that the bid index formula indicated in the bid document has not been applied during evaluation as indicated in the bid document because it was changed or swooped to give an advantage to some contractors. The following formulae are indicated in different sections of the bidding document as follows:

- i. Formula in the bid document: $(0.6 \times PS) + (0.4 \times TS)$; and
- ii. Formula in the evaluation report: $(0.6 \times TS) + (0.4 \times PS)$

1.2 The Applicant was not provided with clarity on how they did not comply with the technical evaluation in comparison to other bidders.

2. FIRST RESPONDENT’S RESPONSE TO THE APPLICANT’S GROUNDS FOR THE REVIEW

2.1 The First Respondent conceded to the error in the bid documents regarding the numerical formula, it is of the view that it had absolutely no impact on the result of the bid evaluation and that the score received was calculated based on the formula as set out in words in the bidding document. The First Respondent amplified its argument by relying on Section 52(6) of the Act that “*Where there is a discrepancy between figures and words, the amount in words prevails, and the Board or public entity must correct the mistake and notify the bidder.*”

- 2.2 The First Respondent further submitted that the correction of the error existing in the bidding document could not have prejudiced the Applicant because the instructions to the bidders indicated that the selected bid index weighting will be 60% for the technical score and 40% for the financial score.
- 2.3 In addition, the First Respondent examined the bids to determine whether the bidders were well-established contractors with the necessary experience and have the financial, human, and material resources to satisfactorily execute the contract.
- 2.4 Furthermore, the First Respondent stated that the Applicant did not provide ownership of the essential equipment listed in ITB 6.3 (c).

3. FINDINGS OF THE PUBLIC PROCUREMENT REVIEW PANEL

The Review Panel found that:

- 3.1 The First Respondent disordered the evaluation formulae contained in the bidding document with that used in the evaluation criteria.
 - i. When the bidding document formula $IB = a \times PS + b \times TS$ is used, the Applicant gets the highest bid index and becomes the likely bidder to be selected for award.
 - ii. When the BEC formula is used ($IB = a \times TS + b \times PS$), the Applicant's bid index is no longer the highest and thus the Applicant is not likely to be selected for award.

Therefore, in applying a formula other than that stipulated in the bidding document, the public entity has contravened Regulation 52 (9) and Section 55 (1) of the Act as amended. This aspect provides for ambiguity and had a consequential material effect on the award of the bid.

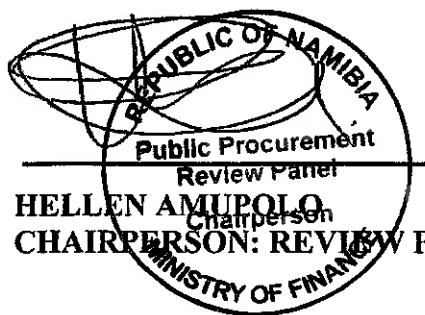
- 3.2 The First Respondent prejudiced the Applicant by subtracting scores for failing to provide documentary proof of ownership of the essential equipment listed in the ITB 6.3(c), which was not a requirement as per the bidding documents, therefore it deviated from their criteria by using supplementary information, which is in contradiction of Regulation 52(9) of the Public Procurement Act.
- 3.3 According to Section 1 of the Public Procurement Act, 2022 (Act No. 3 of 2022) days means "*a day other than Saturday, Sunday or public holiday*", and in counting the days from the date of issuing of the notice for selection of award, the First Respondent counted days from 22 to 28 December 2022 that included a Saturday and a Sunday, hence that is in violation of the stand still days allowed. Regulation 42 (1) states that a bidder who wishes to lodge an application for review, must within 7 days of receipt of the decision by a public entity apply to the Review Panel for review. The Review Panel found that the stand still period was short of the prescribed days as allowed in the act and this would have prejudiced applicants that would have wanted to raise any matter within the days provided for in the act.

4. DECISIONS OF THE PUBLIC PROCUREMENT REVIEW PANEL

In the premise of the above, the Review Panel decided that:

4.1 In respect of bid number W/ONB/OTC-02/2022/23, it is ordered that the procurement proceedings be terminated and start afresh in terms of Section 60 (f) of the Public Procurement Act 15 of 2015.

4.2 The effective date of this Order is 19 January 2023.



HELLEN AMUPOLO
CHAIRPERSON: REVIEW PANEL (I.R.O. THIS MATTER)