



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 07 FEBRUARY 2023

IN THE MATTER BETWEEN

MINISTRY OF AGRICULTURE, WATER, AND LAND REFORM APPLICANT

AND

WILDON TECHNICAL SERVICES CC

RESPONDENT

IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 68 OF THE PUBLIC PROCUREMENT ACT, ACT 15 OF 2015 READ IN CONJUNCTION WITH REGULATION 46 OF THE PUBLIC PROCUREMENT REGULATIONS

BID NO: G/OIB/38-01/2022: SUPPLY, DELIVERY, AND COMMISSIONING OF A DRILLING RIG FOR THE MINISTRY OF AGRICULTURE, WATER, AND LAND REFORM FOR THE PERIOD 11 JULY 2022 TO 12 SEPTEMBER 2022

Present: Brownyn Mutrifa (Chairperson) with Tulimeyo Kaapanda, Lukas Kudumo Siremo, Donè Brinkman, and Kenandei Tjivikua concurring.

Heard : 07 February 2023

Decided : 07 February 2023

REVIEW PANEL ORDER

Having heard **Mr. Mwala Lutaka** for the Applicant and **Mr. Samson Enkali** for the Respondent, and subsequently having read the application for suspension, debarment, and disqualification in terms of Section 68 (1) read with Regulation 46 of the Public Procurement Act. No. 15 of 2015 and other documents filed for record, the Review Panel observed the following:

- A. That the factual record submitted by the Applicant in terms of Section 68 (2) (a) of the Public Procurement Act includes two letters written by Mr. Wilbard Shikongo an employee of Tube-O-Flex Namibia (Proprietary) Limited which forms the basis of the application. In a letter dated 5 August 2022, Mr. Shikongo on behalf of his employer Tube-O-Flex listed purchase orders purportedly issued to Wildon Technical Services CC for the supply of water-related machinery and equipment, confirming timely delivery between the period of January 2017 to July 2021. In another letter dated 5 August 2022, Mr. Shikongo wrote that the letter he initially authored is incorrect and that Wildon Technical Services never supplied Tube-O-Flex Namibia (Pty) Ltd with equipment. Despite being central to the application, the said letters in the absence of a sworn statement would not assist the Review Panel to determine the facts and conclude the hearing.
- B. The Review Panel on its own initiative summoned Mr. Wilbard Shikongo (hereinafter referred to as Mr. Shikongo) to confirm the authenticity of the two letters he allegedly authored related to Wildon Technical Services CC on 5 August 2022 and 3 October 2022.
- C. Mr. Shikongo confirmed being the author of the letters, confirming that the letter listing the Purchase Orders he issued was just meant to serve as a sample upon request by Mr. Donaldson Shuuluka (the Managing Director of Wildon Technical Services CC) and he was not aware that Mr. Shuuluka was going to use the sample as an attachment to his bid. Upon realizing that the letter he issued was being used to create a wrong image, having

been visited by the officials of the Applicant, he then opted to author the second letter to dispel the wrong impression created.

1. GROUNDS FOR APPLICATION FOR DEBARMENT

The Applicant being a Public Entity, requested for the suspension, debarment, and disqualification of Wildon Technical Services CC (Respondent) in terms of Section 68 of the Public Procurement Act, from participating in the procurement process for a period of sixty (60) months on the following grounds:

- 1.1 Supplying false information (misrepresentation) in the process of submitting a bid.
- 1.2 Bid rigging or collusion between bidders or a bidder and a supplier, agent, or staff members concerning the formulation of any part of the bidding document.
- 1.3 Intentional deception, wasting of the public entity's time and resources, and timely delivery of crucial machinery that contribute to the strategic goal of the Ministry.

2 APPLICANT'S FURTHER GROUNDS STATED DURING THE HEARING

- 2.1 The Applicant stated that the procurement of a drilling rig is very crucial for the Ministry and the nation at large. The Applicant further stated that this bid was advertised on 18th July 2022 and closed on 15th August 2022, however, the procurement process was delayed by the Respondent when it challenged the notice of intention to award bid No. G/IOB/38-01/2022 whereas the Respondent knew that the documents attached to its bid submission were not authentic.
- 2.2 The Applicant stated that after the Ministry received a complaint letter from the Respondent, the Ministry decided to conduct a re-evaluation, and the Bid Evaluation Committee found out that the Respondent failed to provide documentary proof of experience in works of similar nature or supply of goods (size, value, and type) in the last five (5) years. Further, the Applicant stated that the completion certificate or Purchase Order provided by the Respondent was ambiguous notwithstanding the Respondent insisting that reference letters from Tube-O-Flex Namibia (Pty) Ltd, duly signed and date stamped are attached to its bid.
- 2.3 On the query by the Review Panel if such due diligence of contacting companies indicated in reference letters was done to all bidders, the Applicant stated that, for other bidders the information indicated was specific and clear and did not require additional confirmation. That, however, in the case of the Respondent, the reference letter only had purchase order numbers with amounts, and it was not explicit as what was bought which was related to the bid in question and hence this prompted the BEC to visit the premises to get a printout of the purchase order materials as confirmation.

3 THE RESPONDENT'S RESPONSES TO GROUNDS FOR APPLICATION OF DEBARMENT

- 3.1 The Respondent conceded that what has been said by Mr. Shikongo is not disputed, confirming that Tube-O-Flex Namibia (Pty) Ltd did not issue purchase orders to Wildon Technical Services CC and that the Purchase Order submitted by the Respondent as proof of similar work carried out by the Respondent over the last five (5) years was not genuine but rather a mere example of a Purchase Order printed by Mr. Shikongo an employee of Tube-O-Flex Namibia (Pty) Ltd.
- 3.2 The Respondent further stated that its replying affidavit submitted in terms of Section 68 (2)(c) of the Public Procurement Act and its purpose is three-fold:
- 3.1.1 To seek an order dismissing the Applicant's application for debarment.
 - 3.1.2 To seek an order invoking an investigation into the conduct and allocation of the tender to Mana Management JV Dales Constructions t/a Borehole Drilling and Equipment, and the entire tender process given the basis and facts of complaints filed by the Applicant.
 - 3.1.3 To seek an order in terms wherein the award of the tender by the Applicant to Mana Management JV Dales Constructions t/a Boreholes Drilling & Equipment is set aside pending an investigation into the qualifications of such award. The Respondent alleged that the Namibian company forming the joint venture awarded the contract does not exist, but the real one is Dales Construction Maintenance CC which is not in good standing with the receiver of revenue (Namibia Revenue Agency, NamRA).
- 3.3 The Respondent sought an order wherein the Applicant is directed to investigate the conduct of some of its staff members' involvement and possible contravention of Section 66 of the Public Procurement Act. Further, the Respondent requested that should the Review Panel decide to debar the Respondent it should debar the Respondent for one (1) year only.
- 3.4 Furthermore, the Respondent alleged that there was no reference check on other companies' bids and it was only done to Wildon Technical Services CC and alleged that it seemed that the Applicant decided to apply for debarment because of the text messages which it refers to as the threats, which harbours on a personal vendetta.

4 FINDINGS OF THE REVIEW PANEL

Having heard the parties, the Review Panel made the following findings:

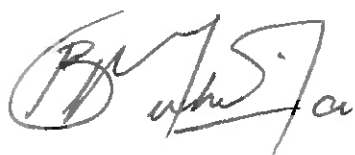
- 4.1 Mr. Shikongo's evidence affirmed to the Review Panel that Wildon Technical Services CC did not provide services to Tube-O-Flex Namibia (Pty) Ltd and that the Purchase Order submitted by Wildon Technical Services CC to the Ministry of Agriculture, Water, and Land Reform was a deliberate effort to mislead the Applicant.

- 4.2 That the Respondent contravened Section 68(1)(a) of the Public Procurement Act when it provided false information in the process of submitting a bid.
- 4.3 That the Respondent violated Section 68(1)(f) for an offence related to dishonesty, fraud, and corruption.
- 4.5 Other allegations stated by the Respondent are not relevant to an application for suspension, debarment, and disqualification in terms of Section 68(1) read with Regulation 46 of the Public Procurement Act. No. 15 of 2015, thus should be directed and handled by the relevant avenues including bringing such matters to the Public Procurement Policy Unit (PPU).

5 DECISION OF THE REVIEW PANEL

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

- 5.1 The Respondent is suspended and barred from participating in the current procurement process under review and is further debarred from participating in the public procurement process for a period of one (1) year in terms of Section 68(2) read with Regulation 46(1).
- 5.2 This Order is effective from 07 February 2023.



BROWNY MUTRIFA
CHAIRPERSON: REVIEW PANEL (i.r.o. this matter)

