



**REPUBLIC OF NAMIBIA**

**MINISTRY OF FINANCE AND PUBLIC ENTERPRISES**

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**PUBLIC PROCUREMENT REVIEW PANEL**

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING  
HELD ON 20 SEPTEMBER 2023 IN WINDHOEK, NAMIBIA**

**IN THE MATTER BETWEEN:**

**WINDHOEK CONSULTING ENGINEERS CC**

**APPLICANT**

**AND**

**MUNICIPALITY OF WALVIS BAY**

**KAREN MILLER ARCHITECTS**

**CEPM & PARTNERS ENGINEERS (PTY) LTD**

**ONGWEDIVA CONSULTING ENGINEERS**

**BUHRMANN & PARTNERS CONSULTING ENGINEERS**

**TWEYA CONSULTING ENGINEERS AND KAMILA**

**ARCHITECTS AND PROJECT MANAGERS JV**

**NINA MARITZ ARCHITECTS**

**MARLEY TJITJO ARCHITECTS INCORPORATED**

**SEAL CONSULTING ENGINEERS CC**

**AU CONSULTING ENGINEERS & INFRASTRUCTURE**

**MANAGERS (PTY) LTD**

**1<sup>ST</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

**3<sup>RD</sup> RESPONDENT**

**4<sup>TH</sup> RESPONDENT**

**5<sup>TH</sup> RESPONDENT**

**6<sup>TH</sup> RESPONDENT**

**7<sup>TH</sup> RESPONDENT**

**8<sup>TH</sup> RESPONDENT**

**9<sup>TH</sup> RESPONDENT**

**10<sup>TH</sup> RESPONDENT**

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**REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC  
PROCUREMENT ACT, 2015 (ACT NO. 15 OF 2015) AS AMENDED**

**BID NUMBER CS/ONB/RFP/MWB-40/2022: DESIGN, CONTRACT  
ADMINISTRATION AND SUPERVISION FOR WALVIS BAY INDEPENDENCE  
BEACH PROMENADE**

**PRESENT: Lukas Kudumo Siremo (Chairperson) with, Gilbert Habimana, Brownny  
Mutrifa, Kandali Iyambo and Selma-Penna Utonih concurring**

**Heard on: 20 September 2023**

**Decided on: 20 September 2023**

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**REVIEW PANEL ORDER**

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**1. INTRODUCTION**

1.1 The review hearing took place in the form of physical and virtual presence.

1.2 Having heard Ms. Elsa Kaanjosa, for the 1<sup>ST</sup> Respondent and other interested parties who were joint in terms of sub-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) as amended (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 hereunder towards the end.

**2. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICANT’S  
APPLICATION FOR REVIEW:**

2.1 The Municipality of Walvis Bay released a Notice for Selection of Award for the procurement of a consultant for the design, contract administration and supervision for the Walvis Bay Independence Beach Promenade in the Erongo Region, with reference number CS/ONB/RFP/WBM-40/2022, in terms of Section 55 (b) of the Public Procurement Act, 2015 (Act No. 15 of 2015).

2.2 As per the attached executive summary and bid evaluation committee (BEC) minutes released alongside the Notice for procurement award, Windhoek Consulting Engineers (WCE) was

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the recommended bidder for the award as the lowest substantially responsive bidder with the bid, however, it was awarded to Karen Millar Architects (2ND Respondent).

- 2.3 As per the communication and letter dated 22 August 2023 WCE requested for a clarification and review of the selection of Award with the proponent confirming receipt thereof, replying that they are attending to the reconsideration but have failed to comply with the reconsideration within the allocated timeframe of 7 days from the date of which the reconsideration was requested.

#### **Relief Sought**

- 2.4 The Applicant request the Review Panel to consider Section 60 (d) of the Public Procurement Act, 2015, and correct the decision of the 1<sup>ST</sup> Respondent.

### **3. POINTS IN LIMINE RAISED BY THE PARTIES**

- 3.1 The Chairperson of the Review Panel afforded the floor to parties present to indicated if there are any points in limine in terms of the Review Application, such as non-compliance with respect to the provisions of the Public Procurement Act, 2015 as amended and the Public Procurement Regulations, 2017 of the Public Procurement Act, 2015.
- 3.2 Thus, the 1<sup>ST</sup> Respondent notified the Review Panel that the bid, NCS/ONB/RFP/MWB-40/2022 under review has already expired as it was valid for 120 days starting from 03 March 2023. That the 1<sup>ST</sup> Respondent became aware of this matter only on 19 September 2023 when it was preparing to come to the review hearing proceedings set for 20 September 2023.
- 3.3 The Review Panel than allowed all parties to count and confirm if really the bid had expired before the date of the review hearing, and it was found that, 120 days was due on 29 August 2023. As such even though the Review Panel had deliberated on the matter before all parties were present it was then discussed that, since the Bid has expired, it is of no relevance to continue with the merits of the Review Application as the Bid in question does not exists any longer.
- 3.4 The Applicant raised it grievance on the matter indicating that the 1<sup>ST</sup> Respondent should have informed parties instead of wasting time and money. The Review Panel was equally concerned and indicated to the 1<sup>ST</sup> Respondent that, it is good practice and fair, to have already looked at this and inform that the Bid has expired beforehand.
- 3.5 The Review Panel further indicated that, it will issue the order accordingly, which is to start the bidding process afresh, seeing that there was no Notice of Award made in terms of Section 55(5) of the Act and that there is no signed contracted done beforehand. That, any aggrieved bidder, most especially the Applicant could seek other remedies through the High Court if it finds this to be unreasonable, mainly the matter of leaving the bid to expire by the 1<sup>ST</sup> Respondent and also if it wants to be compensated for money wasted or used in this entire process.

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#### 4. FINDINGS OF THE REVIEW PANEL

Having heard the Parties at the Review Panel hearing and having considered the written submissions of the Parties, the Review Panel made the following findings.

- 4.1 As per point in limine raised by the 1<sup>ST</sup> Respondent (Municipality of Walvis Bay), the bid validity was for 120 days which expired on 29 August 2023 and no bid validity period extension was made in terms of Section 49(2) of the Act. Thus, the bid cannot be awarded, nor issues raised by the Applicant be necessary to be deliberated.
- 4.2 Prior to all parties appearing during the review hearing the proceedings, the Review Panel perused through the documents submitted with reference to the matters raised in the review application and it was observed that the 1<sup>ST</sup> Respondent did not comply with the provisions of the Act. Firstly, the BEC evaluated as per the bidding document criteria and methodology, however the procurement committee (PC) evaluated otherwise, by calling for presentations which were not part of the bid evaluation criteria. Secondly, even after the presentation made by the Applicant and the 2<sup>ND</sup> Respondent, the BEC still followed the evaluation criteria and recommended the Applicant. However, the PC did not follow the recommendation of BEC, but recommended to the accounting officer to award to the 2<sup>ND</sup> Respondent based again on additional criteria such as having a office in Erongo region and having senior personnel in those offices.

#### 5. DECISIONS OF THE REVIEW PANEL

Based on the above findings, mainly paragraph 4.1 the Review Panel orders the following:

- 5.1 That, the 1<sup>ST</sup> Respondent (Municipality of Walvis Bay) in terms of Section 60(f) of the Public Procurement Act, 2015 (Act No. 15 of 2015) as amended, terminate the procurement proceedings, and start afresh the bidding process as the bid has expired.
- 5.2 In addition, the 1<sup>ST</sup> Respondent (Municipality of Walvis Bay) is further instructed and directed to follow the provisions of Section 55(4A), 4(B), (4C) and (4D) of the Act, as amended when deciding to award a procurement contract.
- 5.3 That the effective date of this order is 20 September 2023.
- 5.4 That the 1<sup>ST</sup> Respondent (Municipality of Walvis Bay) must provide proof of implementation of this order to the Procurement Policy Unit (PPU) within thirty (30) days from the receipt date of this order, i.e. 26 September 2023. That a copy of such proof be sent to the Review Panel Secretariat.

  
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**LUKAS KUDUMO SIREMO**

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

