



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 OCTOBER 2023

IN THE MATTER BETWEEN

ALV CONSULTING ENGINEERS CC J.V

ENGCO CONSULTING ENGINEERS CC

APPLICANT

AND

COUNCIL FOR THE MUNICIPALITY OF SWAKOPMUND

& 9 OTHER BIDDERS

RESPONDENT

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

**BID NO: CS/RP/SM-003/2023 – CONSULTANCY SERVICES FOR THE DESIGN OF
A LIFTING PUMP STATION IN EXTENSION 42 AND ELECTRICAL SERVICES
FOR EXTIONS 40,41, 42, 43, 45 WAAGDAAR, SWAKOPMUND**

**Coram: Ehrenfried Honga (Chairperson), with Doné Brinkman, Gilbert
Habimana, Paulina Kandali Iyambo and Brownly Mutrifa.**

Heard: 12 October 2023

Decided: 12 October 2023

ORDER

1. INTRODUCTION:

- 1.1 A hybrid meeting was held, using both physical and virtual modes.
- 1.2 Having heard **Mr. Cletus Nyongesa**, for the Applicant, **Mr. Piet Burger** for the 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) (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:**

APPLICANT

- 2.1 The Applicant stated that during the evaluation by the First Respondent, they scored zero (0) points under the column of Namibian Employees and they disagreed on the said score based on the following facts:
- a) Pursuant to bid data sheet item No.3.4 (i) (b)(ii);
 - Bidder scores 4% for Namibian Team Leader;

- Bidder scores 1% if 50%-60% of employees TO RENDER SERVICES are Namibian; and
- Bidder scores 3% if more than 60% of Employees TO RENDER SERVICES are Namibians.

2.2 The Applicant stated that the main proposed team (employees to render services) according to bid data sheet item No. 5.2 (a) (iii), they ought to have scored maximum points as follow:

- i) 1 Team Leader (Civil Engineer);
- ii) 1 Civil Engineer (Water /Sewer/Structure);
- iii) 1 Electrical Engineer; and
- iv) 1 Mechanical Engineer.

2.4 The Applicant stated that proposed team to be developed on this project will include the following key personnels:

- 2.4.1 Theunis Heunis (Inc.Eng) -Team Leader (Civil /Structural);
- 2.4.2 Stanley Gariseb (Inc. Eng) -Design Engineer (Civil /Strutural);
- 2.4.3 Alexander Fredeerico (Inc.Eng) Design Engineer 9 Electrical); and
- 2.4.4 Bernice Blauuw (Pr.Eng) Design Engineer (Mechanical).

The Alternative /Support staff members to compliment the above team and whose input on the project will be part time are as follows:

- 2.4.5 Delilla Kalangula (Pr.Eng) – Assistant Team Leader (Civil/Structural);
- 2.4.6 William Hangua (Pr. Eng)- Asistant Design Engineer (Civil/Structural);
- 2.4.7 Set-Son Malkia (Inc. Eng) – Assistant Design Enginerr (Electrical); and
- 2.4.8 Lovewell m. Chitiyo (Inc. Eng) – Assistant Deign Enginerr (Mechanical).

2.5 The Applicant stated that the key personeel proposed, as indicated below, for this assignment have extensive experience in the provision of municipal services (civil , geotechnical, structural, electrical reticulation and mechanical) and documentations in parts of Namibia including Municipality of Swakopmund and in Southern Africa in general and have proven capability to manage all aspects pertaining to detailed design, construction tender documentation, and contract administration and construction supervision.

2.6 The Applicant alluded that their key personel staff is composed of all 4 Namibian Nationals. The Applicants verdict is as follows:

- Bid data sheet item No. 3.4 (i) did not mention the need of any evidence to confirm Namibian citizenship and as such no assumptions can be made that the client required such evidence of ID Copies to be attached for consideration to score under margin of preference.
- Section 3- Standard form (form tech 6) - of the RFP describes the standard format for a typical CV for any proposed staff.
- In addition to the above, all 4 proposed key staff members'particulars included their certified ID copies. However, the alternative staff members'particulars did not include ID Copies, nonetheless, their nationalities were still noted in their respective CVs.

- The Respondent have indicated on their bid evaluation sheet that only 2 IDs out of possible 8 IDs were provided to proof citizenship. The Applicant disagree on this based on the fact that all four IDs for the 4 key staff members that would be evaluated by the PC and/or BEC were submitted.
- 2.7 The Applicant further states that they scored 95.4% and Bidder No.4 scored 77.3% based on the initial executive summary. However, the latest executive summary indicates that Bidder No.4 scored 97% while the Applicant retained similar marks and this afforded the said bidder a first position to advance to financial evaluation stage.

3. POINTS IN LIMINE:

- 3.1 At the commencement of the review proceedings and as part of points in limine, the Review Panel sought to clarify whether the application was under oath and if the response to the application was filed within the stipulated two days. Both these two aspects are implied directly or indirectly by regulation 42 (4) of the Public Procurement Act.
- 3.2 To establish the facts (as alluded to under 3.1 above) the Applicant confirmed that the application is a three page document. This three page document did not include any declaration under oath as is expected and required , for any founding affidavit.
- 3.3 It should also be noted here that the Applicant filed a one page document, under oath, which authorised Mr Clatus Nyongase to represent the Applicant during the review hearing. The document under oath did not include the reasons for the review application.
- 3.4 On the other hand, the Respondent confirmed that the reply to the application was filed beyond the two days period.
- 3.5 Finally, both the Applicant and the Respondent did not have any other points in limine to add.

4 Ruling of the Review Panel on the Points in Limine

The Review Panel excused everyone and then deliberated on the points in limine as indicated below.

- 4.1 Referenced was made to the High Court Case between Paragon Inv (Pty Ltd) Jv China HG versus the Chairperson Review Panel. Paragraph 21 of this case reads “It is furthermore, clear as day, that a review application is one accompanied by a founding affidavit under oath to place evidence before the Review Panel, and it must be lodged with the Review Panel. That is exactly the reason why other bidders or any interested person is required to file a “replying affidavit” as contemplated in regulation 42(4) of

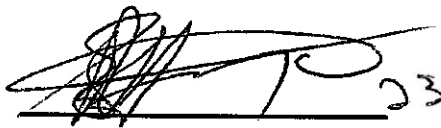
the Public Procurement Regulations in answer to the avertments contained in the founding affidavit.

- 4.2 Given the above (4.1) the Review Panel view found that the Applicant acted contrary to Regulation 1 (1), (2) and 2 (1) of Justices of the Peace and Commissioners of oaths Act 16 of 1963 in that its Foundation affidavit was not commissioned under oath;
- 4.3 As such, the document that contains the grounds for review was not sworn in and thus the application was not properly submitted to the Review Panel. The Public Procurment Act requires that an Application for Review must contain reasons for the review. The Review Panel found that the reasons for the review was not under oath.
- 4.4 For the record, when the above ruling (4.3) was communicated to all parties the Applicant expressed his dissatisfaction and suggested that the one page document (under oath) ought to have been read together with the founding affidavit.

5. DECISIONS OF THE REVIEW PANEL:

Based on the above, the Review Panel orders the following:

5.1 In terms of Section 60(a) of the Public Procurement Act, 2015 (Act No .15 of 2015), the Review Panel hereby dismisses the Applicant's review application as the founding affidavit was not under oath.



Mr. Ehrenfried Honga

CHAIRPERSON: REVIEW PANEL (IRG THIS MATTER)

