



**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 6 OCTOBER 2023**

**IN THE MATTER BETWEEN**

**KEYPLOT INVESTMENTS (PTY) LTD**

**APPLICANT**

**AND**

**MINISTRY OF WORKS AND TRANSPORT**

**1<sup>st</sup> RESPONDENT**

**DANBON (PTY) LTD**

**2<sup>nd</sup> RESPONDENT**

**MICC HOUS NAMIBIA (PTY) LTD**

**3<sup>rd</sup> RESPONDENT**

**FORUM PROPERTY INVESTMENT (PTY) LTD**

**4<sup>th</sup> RESPONDENT**

**SANNAMIB INVESTMENTS (PTY) LTD**

**5<sup>th</sup> RESPONDENT**

**IGI HOUSE (PTY) LTD**

**5<sup>th</sup> RESPONDENT**

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

**BID NO: NCS/ONB/23-03/2022 – LEASING OF BUILDING FOR THE OFFICE OF THE PRIME MINISTER DEPARTMENT OF PUBLIC SERVICE MANAGEMENT FOR THE PERIOD OF THREE (3) YEARS**

**Coram: Selma-Penna Utonih (Chairperson), with Ehrenfried Honga, Kenandei Tjivikua, Brownny Nutrifa and Hellen Amupolo.**

**Heard: 6 October 2023**

**Decided: 6 October 2023**

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**ORDER**

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**1. INTRODUCTION:**

- 1.1 A hybrid meeting was held, using both physical and virtual modes.
- 1.2 Having heard, Ms. **Margarete van Niekerk** for the Applicant, Ms. **Suama Mhinge** for the First 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. POINTS IN *LIMINE* RAISED BY THE PARTIES:**

- 2.1 At the commencement of the review proceedings, the Chairperson requested the Parties to raise any points in *limine* that they may have before the substantive merits of the reviews were heard. The Applicant informed the Review Panel that the First Respondent’s replying affidavit was filed late and it is contradictory to Regulation 42

(4) of the Public Procurement Regulations. The Review Panel confirmed and decided that the application is unopposed thus the Review Panel would only engage the First Respondent when it needs clarity on the matter.

## **2. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICATION FOR REVIEW:**

- 2.1 The Applicant in its application for review informed the Review Panel that the First Respondent erred in finding that the Applicant's bid was not responsive because the parking bays are not onsite and that it had to be rented from Town Square. The Applicant further submitted that Section V of the bidding documents only required the provision of 80 parking bays. Section V did not require the parking bays to be onsite. The Applicant indicated in its bid submission that it offers the required 80 parking bays at Town Square Parking which is less than 300 metres away from the building.
- 2.2 The Applicant further indicated in its offer that 80 parking bays form part of the offer. The First Respondent is not required to lease it separately as the same is included in the offer. The scope of work and performance specification did not include a detailed layout of how demarcation is to be done and where they want or do not want carpets or tiles. The lessee should provide these specifications/layouts to the Applicant/Lessor to enable the Applicant/Lessor to comply with the Lessee's requirements.

## **3. APPLICANTS' SUBMISSIONS AT THE REVIEW PANEL HEARING:**

- 3.1 The Applicant submitted that the First Respondent indicated in its Executive Summary of the Bid Evaluation Committee report that the Applicant provided parking bays that are not onsite and that the Applicant's parking bays must be rented from Town Square or Freedom Square either. The Applicant further informed the Review Panel that the bidding documents only required the provision of 80 parking bays, and it did not require the parking bays to be onsite.
- 3.2 Upon enquiry by the Review Panel members, the Applicant stated that page 43 of the bid document requires four (4) posts for female toilets and three (3) hand wash basins per toilet and two (2) pots for male toilets and three (3) hand wash basins per toilet and 2 urinals, however, the evaluation criteria used to evaluate bids was not part of the criteria set out in the bidding documents.
- 3.3 The Review Panel engaged the First Respondent during the proceedings to clarify how the bids were evaluated and what methodology and/or criteria were used to compare each bid with the evaluated cost of other bids to determine the most economically advantageous bids. The First Respondent could not explain how the examination and evaluation of bids were conducted.

## **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 That, the First Respondent failed to file its replying affidavit with the Review Panel within two days upon being served with the copies of the review application. The First Respondent contradicted Regulation 42(4) of the Public Procurement Regulations.
- 4.2 That, the First Respondent acted contrary to Section 52 (9) when it failed to evaluate bids according to the criteria and methodology set out in the bidding documents.

**5. DECISIONS OF THE REVIEW PANEL:**

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

- 5.1 Based on the documents filed, the Review Panel orders in terms of Section 60(c) that the decision of the First Respondent is set aside in whole with the following instructions:
  - 5.2.1 that, the First Respondent must re-evaluate all bids in accordance with Section 52(9) of the Public Procurement Act 15 of 2015 as amended.
  - 5.2.2 The Public Entity shall provide proof of implementation of this Order to the Procurement Policy Unit within thirty (30) days from the receipt date of this Order. A copy of the proof should be sent to the Review Panel Secretariat.

  
Selma-Penna Utonih  
CHAIRPERSON: REVIEW PANEL (IN THIS MATTER)

