



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 05 OCTOBER 2023 IN WINDHOEK, NAMIBIA**

IN THE MATTER BETWEEN:

PP IMMIGRATION BUSINESS CONSULTANTS CC

APPLICANT

AND

MINISTRY OF HEALTH AND SOCIAL SERVICES

PRIME MEDICAL & TRADE CC

DESTINY PLANNER INVESTMENT CC

MANIC MEDICAL SUPPLIES

FIFTH CHAMBERS

NAMIBIA MEDICAL ENGINEERING CC

ZETHASH MEDICAL SUPPLIES (PTY) LTD

HIGHTECH MEDICAL CC

ERONGOMED HEALTH DISTRIBUTORS

NAMIBIA MED PLUS SUPPLIES

UNI MEDICAL SUPPLIES

11THRESPONDENT

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

5TH RESPONDENT

6TH RESPONDENT

7TH RESPONDENT

8TH RESPONDENT

9TH RESPONDENT

10TH RESPONDENT

DANIETZCH SCIENTIFIC EQUIPMENT T/A TECHMED	12TH RESPONDENT
UBUNTU MEDICAL CC	13TH RESPONDENT
GENMED ENTERPRISES (PTY) LTD	14TH RESPONDENT
SURGI-CLIN NAMIBIA (PTY) LTD	15TH RESPONDENT
M. MED INVESTMENT CC	16TH RESPONDENT
ZETNAM INVESTMENT CC	17TH RESPONDENT
MARS HEALTH SERVICES CC	18TH RESPONDENT
M & H TRADING ENTERPRISES CC	19TH RESPONDENT
SJV MEDICAL SUPPLIES CC	20TH RESPONDENT
AMANA MEDICAL SUPPLIES	21ST RESPONDENT
SHANGADI INVESTMENT GROUP	22ND RESPONDENT
IMPALA HEALTH SERVICES CC	23RD RESPONDENT
MEDLINE INDUSTRIES	24TH RESPONDENT
FRESH UNIT MEDICAL SUPPLIES	25TH RESPONDENT
AVIREX PHARMACEUTICAL & MEDICAL SUPPLIES	26TH RESPONDENT
FREQUENCY MEDICAL SUPPLIES	27TH RESPONDENT
NAMIBIA X-RAY & IMAGING TEC	28TH RESPONDENT
NAMKIT PHARMACEUTICAL INVESTMENT	29TH RESPONDENT
CWN INVESTMENTS CC	30TH RESPONDENT
GC MEDICAL DISTRIBUTION MARKETING SERVICES	31ST RESPONDENT
STABOO TRADING ENTERPRISES JV PANMED INVESTENT CC	32ND RESPONDENT
AFRIMED INVESTMENT CC	33RD RESPONDENT
SALUTE TRADING CC	34TH RESPONDENT
BION DYNAMICS (PTY) LTD	35TH RESPONDENT

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

BID NUMBER G/ONB/1307TO-4/2023: SUPPLY, DELIVERY, INSTALLATION, TRAINING, MAINTANANCE, COMMISIONING OF INFANT WARMERS (56), PHOTOTHERAPY LIGHTS (50), CTG MACHINES (123) AND DELIVERY BEDS (11) FOR SELECTED HEALTH FACILITIES

PRESENT: Hellen Amupolo (Chairperson) with, Selma-Penna Utonih, Rainer Trede, Brownly Mutrifa and Gilbert Habimana.

Heard on: 05 October 2023

Decided on: 05 October 2023

REVIEW PANEL ORDER

1. INTRODUCTION

- 1.1 The review hearing took place in the form of physical and virtual presence.
- 1.2 Having heard **Mr. Gilroy Kasper** for the Applicant and **Mr. Evaristus Iita**, for the 1st Respondent, although the 1st Respondent was not allowed to give oral representations, and other interested parties who were joined 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. BACKGROUND TO THE REVIEW APPLICATION

- 2.1 The Review Panel Secretariat received a review application in respect of bid number G/ONB/1307TO-4/2023 supply, delivery, installation, training, maintenance, commissioning of infant warmers (56), phototherapy lights (50), CTG Machines (123) and Delivery beds (11) for selected health facilities to Ministry of Health and Social Services on the 20 September 2023, in terms of Regulation 42(1) of the Public Procurement Act, 2015 (Act No. 15 of 2015), as amended.
- 2.2 Upon being served with the review application, the 1st Respondent filed its replying affidavit with the Review Panel on 22 September 2023, in response to the application.

3. GROUNDS FOR THE REVIEW APPLICATION

- 3.1 The Applicant claimed that the 1st Respondent unfairly and unreasonably classified its bid non-responsive on the technical evaluation done.
- 3.2 They further stated that the Applicant deserves more points in terms of the evaluation sheet which is clarified as follows:
 - 3.2.1 The Applicant had to provide Service Providers' experience in medical equipment/supplies. The requested information was provided, and should the bid have been subjected to a fair consideration and adjudication process, the Applicant ought to have scored at least six (6) points (in relation to 2.1 of the technical evaluation sheet);
 - 3.2.2 The Applicant had to provide a Company Organogram, Service certificates and Training Certificates/Qualifications for Managers and Directors which was provided and a score of at least six (6) points was expected (in relation to 2.2 of the technical evaluation sheet);
 - 3.2.3 The requirement was that the Applicant was to have at least a minimum of three (3) years of training in medical equipment and had to further attach evidence of a Bio-medical/Clinical Engineer or Technician Training Certificate(s) or Educational Qualifications. The requested information was duly provided, and the Applicant's staff had 3-5 years' experience as substantiated by the relevant documentation. The Applicant expected to be scored six (6) points (in relation to 2.3 of the technical evaluation sheet);
 - 3.2.4 The Applicant was required to provide a detailed cost break down for the cost of each equipment, delivery, installation, user and technical training for ministerial staff, parts and accessories of which was provided, and the Applicant expected at least ten (10) points with regard to this requirement (in relation to 2.4 of the technical evaluation sheet) and finally.
 - 3.2.5 The Applicant was required to provide a detailed training plan for users and technicians. The Applicant duly submitted a detailed training plan and the Applicant alleged that a score of at least 20 points should have been allocated for this section (in relation to 2.5 of the technical evaluation sheet).
- 3.3 Based on the above claims, the Applicant prayed that the Review Panel refer the matter back to the public entity for re-evaluation and the Bid Evaluation Committee be guided by its own instructions as reflected in the bidding document.

4. PRELIMINARIES

4.1 The Review Panel took note of the fact that the reply for reconsideration by the Applicant was not received, however proof was provided by the 1st Respondent that the response was emailed to the Applicant on 18 September 2023.

5. APPLICANT'S GROUNDS DURING THE REVIEW HEARING

- 5.1 The Applicant argued that the Applicant was evaluated unfairly in terms of points allocated to them under the technical evaluation sheet; they should have scored more points if the 1st Respondent evaluated as per the criteria set in the bidding document.
- 5.2 The Applicant stated that the 1st Respondent should have been guided by its own instructions and claims that it's a case of selective reading.
- 5.3 It was further stated by the Applicant that the 1st Respondent should have sought clarifications if not certain about issues in terms of Section 52(1).
- 5.4 The Applicant stated that a company's registration remains unchanged as the Applicant was registered with the Business and Intellectual Property Authority (BIPA) in 2019, although the amended founding statement was stamped in 2020 at BIPA. It does not change the required period as per the 1st Respondents' requirements. The applicant is registered for more than three (3) years.

6. VALIDATION OF FACTS AS ALLEGED BY THE APPLICANT

Cross checking of the Applicant's allegations for correctness was essential in this regard. Although the application at hand was unopposed, the Review Panel considered it most suitable to validate the allegations made by the Applicant, with the members of the Public Entity who were present at the hearing. Such mode of operandi is guided by regulation 4.4 of the Act.

The reflection by the Public Entity on the correctness of the allegations as entered by the Applicant were as follows:

- 6.1 The first allegation by the Applicant was that it was scored unfairly in terms of the technical evaluation which was a total of sixty (60) points. Under 2.1 of the technical score sheet, the Applicant alleged that it is registered with the Business and Intellectual Property Authority (BIPA) in 2019 and a reference letter from Ministry of Defense was provided. The Applicant feels that it falls within the threshold of 4-7 years and should have obtained six (6) points.

The 1st Respondent's response on the allegation was:

- (a) *the Applicant provided an amended founding statement which was stamped in 2020 at BIPA, the original Founding Statement is not attached.*
- (b) *The Applicant has only three (3) years of experience, which put them in the bracket of four (4) points allocated as per evaluation sheet.*

6.2 The second allegation was that the 1st Respondent did not take into consideration the Organogram, Service and Training Certificates which were submitted under 2.2 of the technical evaluation. The Applicant should have scored six (6) points based on the documents provided.

The 1st Respondent's response to the allegation was that the Applicant did not submit training certificates relating to medical equipment. The certificates submitted by the Applicant do not state the trainee has obtained training. The Applicant scored zero points in this regard.

6.3 The third allegation by the Applicant was that the bid evaluation sheet does not confine a bidder to the expertise required of which range is a Biomedical / Clinical Technician or Engineer's experience required. The Applicant falls in the bracket of 3-5 years substantiated by training certificates and should have scored six (6) points.

The 1st Respondent's response to this allegation was that the documents provided for experience was less than 3 years. it referred to the certificate from Foshan Anya Medical Technology Co. Ltd. For training and experience the 1st Respondent emphasized that experience is of cardinal importance. The Applicant scored zero points in this regard.

6.4 The fourth allegation was that the requirement in the bid documents was to provide a quotation or cost breakdown of the entire project, of which several quotations were provided. The Applicant indicated that training will be free of charge, no cost associated with this aspect. The Applicant should have scored ten (10) points.

The 1st Respondent's response to this allegation was that the cost breakdown provided by the Applicant was incomplete, as the training, which is an important aspect, was missing, it did not meet the requirement. The 1st Respondent was looking for expertise of a biomedical specialist as the medical field is a specialized field. The Applicant after re-evaluation scored four (4) points.

6.5 The fifth allegation was that the training schedule was submitted, and the Applicant should have scored 20 points.

The 1st Respondent's response on this allegation was that no manufacturer training appeared on the training plan of the Applicant. The 1st Respondent indicated that two types of training should be provided namely: trouble shooting and engineering training from the manufacturer. A zero (0) score was given in this regard.

6.6 Finally, the Applicant alleged that it should have scored a total of forty-eight (48) points that is equal to eighty percent (80%) which makes them responsive in terms of the technical evaluation and that its price was also low which should have contributed to the bid's responsiveness.

The Public Entity's response was that after the re-evaluation the correct score for the Applicant is 8 points out of 60 – and that is far below the required minimum of 70%.

7. FINDINGS OF THE REVIEW PANEL

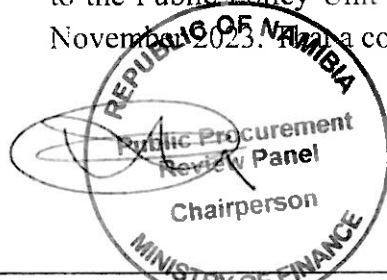
The Review Panel found that:

- 7.1 The bid evaluation process appears to have a lot of ambiguity: as such, the evaluation process seems not to be completely based on the bidding document criteria. Further the technical evaluation criteria of 2.1, 2.2 and 2.3 are not sufficiently specified.
- 7.2 Subsequent to 7.1 (above) the 1st Respondent (Ministry of Health and Social Services) did not meet Section 52(9) of the Public Procurement Act 2015 (Act No. 15 of 2015) as amended which states “*Every bid is evaluated according to the criteria and methodology set out in the bidding documents and is compared with other bids to determine the lowest evaluated substantially responsive bid which meets the qualification criteria*”.
- 7.3 In addition, the 1st Respondent ought to have used Section 52(1) of the Public Procurement Act 2015 (Act No. 15 of 2015) as amended, to seek for clarifications during the bid evaluation period, but this provision was never executed.

8. DECISIONS OF THE REVIEW PANEL

Based on the above findings as outlined in Section 7, the Review Panel orders the following:

- 8.1 That in terms of Section 60(c) of the Public Procurement Act, 2015 (Act No. 15 of 2015) as amended, the Review Panel hereby sets aside in whole the Notice for Selection of Award dated 23 August 2023 and refers the matter back to the 1st Respondent (Ministry of Health and Social Services) with the instruction to re-evaluate bid number: G/ONB/1307TO-04/2023.
- 8.2 The re-evaluation (in 8.1 above) is only on Section 3.3 of the Bid Evaluation Committee report: Technical Evaluation.
- 8.3 That the effective date of this order is 18 October 2023.
- 8.4 That the 1st Respondent i.e., Public Entity must provide proof of implementation of this order to the Public Policy Unit within thirty (30) days from the receipt date of this order, i.e. 18 November 2023. A copy of such proof be sent to the Review Panel Secretariat.



Ms. HELLEN AMUPOLO
CHAIRPERSON: REVIEW PANEL (i.r.o. this matter)