REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 209 2319
Fax : (00 264 61) 236454

Head Office,
Moltke Street,
Private Bag 13295
Windhoek
Namibia

Enquiries: **H. Klukowski**

IN THE PUBLIC PROCUREMENT REVIEW HEARING

HELD ON 30 OCTOBER 2023

IN THE MATTER BETWEEN

SHIKUVULE TRADING CC	**APPLICANT**
AND	
CENTRAL PROCUREMENT BOARD OF NAMIBIA AND 44 OTHERS	**1ST RESPONDENT**

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

BID NO: NCS/OAB/CPBN-02/2023 – PROVISION OF SECURITY SERVICES TO THE NAMIBIA TRAINING AUTHORITY HEAD OFFICE, GOBABIS, OKAKARARA.VALOMBOLA, NAYAYALE, EENHANAAND ZAMBEZI VOCATIONAL TRAINING CENTRES (VTC'S) FOR A PERIOD OF 36 MONTHS.

Present: Selma-Penna Utonih (Chairperson), with Tulimeyo Kaapanda, Lukas Siremo, Kenandei Tjivikua and Gilbert Habimana, concurring.

Heard : 30 October 2023
Decided : 30 October 2023

REVIEW PANEL ORDER

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1. Introduction

1.1 A hybrid meeting was held, using both physical and virtual modes.

1.2 Having heard Mr. H. Hamunyela representing the Applicant, in the absence of the 1st Respondent, and having read the application for review in terms of Section 59(1) of the Public Procurement Act, 2015 (Act No.15 of 2015) (hereinafter referred to as the "Act"), read with Regulation 42 of the Public Procurement Regulations: Public Procurement Act, 2015 (hereinafter referred to as the "Regulations").

1.3 Having read the application for review and other documents filed as part of the record, the Review Panel, in respect of the matter and made the following findings and subsequent order.

2. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICANT'S APPLICATION FOR REVIEW

2.1 The Applicant applied for reconsideration on the 21 August 2023 the 1st Respondent however failed respond within the 7 days from the dated of the application. The Applicant states they could not apply to the Review Panel because they were not in the possession of the score sheet or detailed evaluation report to enable it to formulate its review grounds. The Applicant received the response from the 1st Respondent on the 03 October 2023.

2.2 Stage 2, number 4.2 provides for criteria for the top three management employee's experience and it is indicated that the maximum score is 10 and must meet the following requirements: a minimum of Grade 12 certificate with Security Training, have a minimum of five year experience in the management of Security Guard Services (submit services certificates/letters from previous and/or current employers and CV's) and that bidders must provide Certificate of Conduct by Nampol for the top three management. The applicant however only scored 4 because the BEC found that two of the top three management did not meet all the criteria of the requirements.

2.3 The Applicant further states that Stage 2 of the technical evaluation in 4.6 required a detailed training plan and they submit a business plan which set out program for security guards after recruitment.

2.4 Further in Stage 2, in 4.5 the Applicant are required to provide firearm handling certificates for at least 5 guards, and they submitted certified copies of security training certificates that were issued by the person duly trained by the relevant law enforcement agent.

2.5 The Applicant therefore states that the Evaluation Committee and the 1st Respondent did not apply their minds to the applicant's bid and bidding documents and failed to act fairly and reasonably.

3. POINTS IN LIMINE RAISED ON 30 OCTOBER 2023

3.1 At the commencement of the review proceedings. PIS Security Services who is cited as the 7th Respondent in the review application, its legal representative alleged that the Application is defective for reason being that the Applicant applied for reconsideration on the 21 August 2023 and only applied for a review hearing on 13 October 2023 which is way out of time in terms of Sections 55(4A) and 55(4B) of the Public Procurement Act, 2015 as amended. It was further stated that more details are contained in its replying affidavit.

3.2 Another interested party, Six Thousand Security Services who is cited as the 6th Respondent in the review application also stated that the Review Panel cannot entertain this application as it is defective as it was filed out of time and there is no legal provision for condonation therefore the application should be dismissed.

3.3 The Applicant also responded that the 6th and 7th Respondents were misleading the Review Panel, as Sections 55(4A) and 55(4B) must not be read continuously, but that rather, it is challenging the decision or action taken by the 1st Respondent (The Central Procurement Board of Namibia) on 3rd and 5th October 2023. That such a decision is in line with Section 59(1) of the Public Procurement Act, 2015 as amended.

3.4 The Review Panel queried with the Applicant if its review application is not related to the decision of the 21 August 2023 which was made by the 1st Respondent in its notice for selection of award and of which the Applicant applied for reconsideration. The Applicant stated that, its review application is not on the decision of 21 August 2023, but on the decision of 3rd October 2023 which was communicated to it on 5 October 2023. That it could not apply to the review panel in terms of Section 59(1) if it did not apply for reconsideration in terms of Section 55(4A) of the Act as amended.

3.5 Both the 6th and 7th Respondents when asked of the interpretation of the Applicant, it was stated that, the Applicant is the one misleading Review Panel by trying not to follow the Act as stipulated. That the Applicant in its heard of arguments have demonstrated that Sections 55(4A) and 55(4B) have prescribed timelines that must be adhered to and hence can't be exempted from it just because it filed late and out of time.

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 The Review Panel Members finds that the Applicant applied for reconsideration on the 21 August 2023 and only received a response from the Respondent on the 05 October 2023 while Section 55 (4A) states that "*A bidder referred to in subsection (4)(b) may, within seven days from the date of receipt of the notice referred to in subsection (4), apply to the Board or public entity to reconsider its selection of a bid for award and the Board or public entity must, within seven days from the date of receipt of the application notify the bidder of its decision.*"

In addition, Section 55(4B) further stated that "*If the bidder referred to in subsection (4A) does not, in terms of that subsection, receive a response from or is not satisfied with a decision of the Board of public entity the unsuccessful bidder may within seven days referred to in section 59 apply to the Review Panel for review of the decision or action as contemplated in section 59(1).*"

4.2 The Review Panel established that the Applicant should have applied for review during the stand still period from 31 August 2013 to 08 September 2023 as this was inline within Section 59(1) of the Public Procurement Act, 2015 as amended. However, the Applicant failed to do so as it only applied to the Review Panel on 13 October 2023 and therefore it is established that the application for review was out of time and in violation with Section 59(1) of the Act as amended.

4.3 That the Review Panel cannot condone late submissions for review applications, which is clearly defined in the Public Procurement Act, 2015 as amended. That the Applicant had reasonable time to apply to the Review Panel in terms of Section 59(1) between 31 August 2023 to 08 September 2023. However, the Applicant chose not to, but instead waited until it received a response from the 1st Respondent, whilst the Act in terms of Section 55(4B) states that if does not receive a response within seven days it must apply for review.

5. DECISION OF THE REVIEW PANEL

Based on the findings as stated above, the Review Panel makes the following order:

5.1 The Review Panel hereby dismiss the Review Application filed by the Applicant in respect of **BID NO: NCS/OAB/CPBN-02/2023** – Provision of security services to the Namibia Training Authority Head Office, Rundu, Gobabis, Okakarara, Valombola, Nayayale, Eenhana and Zambezi Vocational Training Centres (VTC'S) for a period of 36 months in terms of Section 60 (a) of Public Procurement Act, 2015 (Act No. 15 of 2015) as amended.

5.2 The effective date of this Order is 30 October 2023.

REPUBLIC OF NAMIBIA Public Procurement Review Panel MINISTRY OF FINANCE

SELMA-PENNA UTONIH
CHAIRPERSON: REVIEW PANEL (i.r.o. this matter)