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 09 NOVEMBER 2023

IN THE MATTER BETWEEN

EMIRATES TRADING CC	**APPLICANT**
AND	
OMUSATI REGIONAL COUNCIL AND 27 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: W/ONB/ORC-01/2023/2024 – CONSTRUCTION OF SERVICES INFRASTRUCTURE IN OKALONGO – CONSTRUCTION OF SEWER RETICULATION PHASE 3 AT EXTENSION 1 IN ONANDJAMBA VILLAGE COUNCIL/OKALONGO SETTLEMENT

Present: Tulimeyo Kaapanda (Chairperson), Lukas Siremo, Donè Brinkman. Wise Immanuel and Michael Gaweseb, concurring.

Heard : 18 December 2023
Decided : 18 December 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. Verpperk Josua Haimbodi representing the Applicant 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 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 states that there were irregularities, and the tender was not awarded in accordance with the applicable Regulation and Act.

2.2 The Applicant argue that the Procurement Act stipulates that the lowest responsive bidder must be awarded, however the public entity did not award to Emirates Trading cc despite being the lowest responsive bidder.

2.3 The Applicant stated that Emirates Trading cc possesses superior experience than the bidder selected for award, and that had the award been made to the Applicant, the government would have saved N$132 724.00 for other developmental projects.

2.4 The Applicant further argued that the benchmark engineer's cost estimates should have been stated in the bid document if it is to be used to disqualify bidders.

2.5 The Applicant also stated that this procurement process has become obsolete, having run out of the 90 days bid validity period.

3. POINTS IN LIMINE RAISED

3.1 The Review Panel brought to the attention of the 1st Respondent its non-compliance with Section 55 (4A) of the Public Procurement Act, Act No. 15 of 2015 as amended, as 1st Respondent failed to finalise the reconsideration process within the prescribed period.

4. 1st RESPODENT'S RESPONSE

4.1 The first Respondent was represented by Mr. Gervasius Kashindi. As the 1st Respondent was served by the Applicant on the 1st December 2023, but only filed a replying affidavit on the 5th December 2023, the Applicant has forfeited its right to respond. However, being key to the application, the Review Panel members resolved to seek clarities from the representatives present.

4.2 The Application is thus unopposed.

5. 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.

5.1 That the Respondent has complied with the evaluation criteria as stated in the bidding document. In terms of Section IV Phase 3: Financial Evaluation I-IV of the bid document, only bids that are technically compliant will be considered for Financial Evaluation and bids equivalent to or up to 10% below the engineers cost estimate will be considered for evaluation.

5.2 That the Applicant was correctly disqualified. The price offered was outside the parameters prescribed in the bidding document by 15.06%.

5.3 That the public entity has followed the right procedure in publishing the procurement plans and associated budgets online and had no obligation to state the monetary value of the project in the bid document.

5.4 That the Applicant should have exercised its right to seek clarity during the clarification period before the bid closed if it was unclear about budgetary provisions.

5.5 The bid has not become obsolete. The bid validity period is 180 days as stated in the bid document.

6. DECISION OF THE REVIEW PANEL

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

6.1 The Review Panel hereby dismiss the Review Application filed by the Applicant in respect of Bid No: **W/ONB/ORC-01/2023/2024 – Construction of Services Infrastructure in Okalongo – Construction of Sewer Reticulation Phase 3 at Extension 1 in Onandjamba Village Council/Okalongo Settlement** in terms of Section 60 (a) and confirm the decision of the Public Entity in terms of Section 60 (e) of Public Procurement Act, 2015 (Act No. 15 of 2015) as amended.

6.2 The effective date of this Order is 08 December 2023.

Republic of Namibia
Ministry of Finance & Public Enterprises
Public Procurement Review Panel
Chairperson

Tulimeyo Kaapanda
CHAIRPERSON: REVIEW PANEL (r.r.o. this matter)