



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 209 2445

Fax : (00 264 61) 236454

Telex: 908-3369

Enquiries: **Kaarina Kashonga**

Head Office,

Moltke Street,

Private Bag 13295,

Windhoek

**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 02 NOVEMBER 2023**

IN THE MATTER BETWEEN

RMB NAMIBIA

APPLICANT

AND

NAMIBIA POWER CORPORATION (PTY) LTD

1ST RESPONDENT

NEDBANK NAMIBIA LIMITED JV

CIRRUS SECURITIES (PTY) LTD

2ND RESPONDENT

& OTHERS

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

**BID NO: SC/RP/NPWR11/2023 – DEBT SPONSORSHIP AND NAMIBIA STOCK
EXCHANGE DEBT LISTING ADVISORY SERVICES FOR NAMPOWER**

Coram: Brownny Mutrifa (Chairperson), with Kenandei Tjivikua, Ehrenfried
Honga, Selma-Penna Utonih and Mekondjo Katunga.

Heard: 02 November 2023

Decided: 02 November 2023

ORDER

1. INTRODUCTION:

- 1.1 A hybrid meeting was held, using both physical and virtual modes.
- 1.2 Having heard **Ms. Janè Louw** for the Applicant, **Ms. Lydia Nghaamwa** 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) and the Public Procurement Amendment Act, 2022 (Act No. 3 of 2022) (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:

- 2.1 At the commencement of the review proceedings, the Chairperson requested the Parties to raise any point in *limine* that they may have before the merits of the matter are heard. Furthermore, the Chairperson requested the First Respondent to provide proof of the notice for the selection of award to the bidders. The First Respondent provided the information that the notice for selection of award was issued on 29 September 2023, and that the standstill period started on 29 September 2023 and ended on 9 October 2023.

- 2.2 The First Respondent informed the Review Panel that, notwithstanding the fact that the Applicant filed its application for reconsideration on 6 October 2023, the First Respondent did not respond within seven (7) days as stipulated in Section 55(4A) of the Public Procurement Act as amended because there were some internal administrative issues to be completed.
- 3. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICATION FOR REVIEW:**
- 3.1 The Applicant in its application for review informed the Review Panel that the First Respondent in its executive summary indicated that although RMB had the lowest price at bid opening, all the responsive bidders' fee proposals were changed to arrive at a "price after adjustment."
- 3.2 The Applicant amplified the foregoing by highlighting that its price and Standard Bank Namibia Limited JV IJG Securities' prices were adjusted upward while the price of the successful bidder, Nedbank Namibia Limited JV Cirrus Securities (Pty) Ltd., was adjusted downward.
- 3.3 Furthermore, the Applicant submitted that it is requesting the Review Panel review the process and outcome of bid number SC/RP/NPWR11/2023 in accordance with Section 55(4B).
- 4. APPLICANT'S SUBMISSIONS AT THE REVIEW PANEL HEARING:**
- 4.1 The Applicant explained that the First Respondent's executive summary shows that, although the Applicant had the lowest price at the bid opening, all responsive bidders' fee proposals were adjusted upwards, while that of the successful bidder, Nedbank Namibia Limited JV Cirrus Securities (Pty) Ltd, was adjusted downwards. The First Respondent's final amount exceeded the clarification amount by N\$800,020.00 and exceeded NamPower's initial amount by N\$1,400,000.00. The Applicant, in addition, explained that it has requested clarification on the calculations substantiating the First Respondent's final amount with a clear explanation for the material increase, however, the First Respondent has failed to furnish the Applicant with feedback on this matter.
- 4.2 Further, the Applicant submitted that since certain items are calculated as a percentage of the amount raised and therefore cannot be exactly quantified yet, the Applicant therefore, sought clarity on which pricing items were considered, which assumptions were relied on, and the formula used by the First Respondent in adjusting and calculating the price for each bidder.
- 4.3 Upon inquiry by the Review Panel, the Applicant stated that it seeks clarity on pricing items to confirm whether the different bidders' fee proposals are comparable and to

ensure that all pricing items have been accounted for by each bidder in arriving at their respective fee proposals.

5. THE FIRST RESPONDENT'S SUBMISSION AT THE REVIEW HEARING:

- 5.1 The First Respondent explained that the initial fee proposal amount of N\$2,429,400.00 was allocated to the Applicant because the First Respondent evaluated bids according to documents submitted by the bidders. Notwithstanding what was articulated in any price opening, the issuance bid price as submitted by the Applicant in the bid is 25bps. The bid price was clarified in terms of Section 52(1) of the Public Procurement Act and the bid price was subsequently clarified at the post-bid clarification meeting held on 17 August 2023 with the Applicant.
- 5.2 The First Respondent further explained that the only three bidders who advanced to the financial evaluation stage had quoted based on varying issuance amounts of N\$500 million, N\$750 million, and N\$1 billion. Upon enquiry by the Review Panel members, the First Respondent submitted that it streamlined the issuance amounts to make the bids comparable. The First Respondent further displays on the screen to demonstrate how all three bidders' prices were calculated. The First Respondent further emphasised that the selected bidder was consistently the cheapest across all three proposed issuance amounts therefore the First Respondent elected to select it for award.
- 5.3 The First Respondent in its closing remarks highlighted that the downward price adjustment for the selected bidder was for ongoing debt sponsor fees, ongoing transfer secretary fees, and NSX annual listing fees that will only be applicable from year two (2) onwards, and these were initially included in the bid proposal for three (3) years as opposed to two (2) years.

6. SUBMISSION BY THE INTERESTED PARTIES:

- 6.1 The Second Respondent submitted that the Act gives provision for bidders to seek clarity before the closing date of the bids and, therefore, the Applicant cannot come and complain at this platform that the bid was unclear. The Applicant had an opportunity to seek clarity during the clarification period.

7. 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:

- 6.1 That, the Applicant did not clarify to the Review Panel what was changed of its financial proposal to ensure that the award will not stay.

- 6.2 That, the presentation that was made by the First Respondent on the screen at the hearing clearly showed how bids were evaluated.
- 6.3 That, of all 3 responsive bidders, the Second Respondent's financial proposal was the lowest and therefore selected.
- 6.4 That, the Applicant in its financial proposal inserted specific prices for the arranger fees as part of its issuance strategy as follows: (a) for the inaugural issuance: 20bps on the amount raised (vanilla issuance) and 5bps on the amount raised (green bond issuance), and (b) all subsequent issuance: 20bps on the nominal amount raised. However, in all the calculations, the First Respondent considered or used the 25bps throughout and disregarded the 20bps as a major component of the Applicant's issuance strategy.
- 6.5 That, the First Respondent appeared not to have had a specific or preferred issuance strategy, and its evaluation concentrated mainly on the pricing items (determination) that are variable. In addition, it appeared that the issuance strategy was not appraised, and the question arises as to why NamPower requested an issuance strategy from the bidders. Hence, the First Respondent should have provided an indication of the issuance amount(s) and intervals (or no intervals) in its Request for Proposal, which would have assisted the bidders in submitting bid proposals aligned and standardized with its issuance strategy.
- 6.6 That, the First Respondent acted contrary to Section 55(4A) of the Public Procurement Act as amended, in that it failed to notify the Applicant of its decision.

7. DECISIONS OF THE REVIEW PANEL:

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

- 7.1 That the Application is hereby dismissed in terms of Section 60(a) and the decision of the First Respondent is hereby confirmed in terms of Section 60(e) of the Public Procurement Act 15 of 2015.
- 7.2 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.



Mr. Brownly Mutrifa
CHAIRPERSON: REVIEW PANEL (FOR THIS MATTER)

