



**REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE**

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 09 FEBRUARY 2021 IN WINDHOEK, NAMIBIA**

IN THE MATTER BETWEEN

ORBIT CONSULTING ENGINEERS CC

APPLICANT

AND

NAMIBIA POWER CORPORATION (PTY) LTD

RESPONDENT

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

**BID NO: SC/RP/NPWR-06/2021: PROVISION OF ENGINEERING CONSULTANCY
SERVICES FOR NAMPOWER RURAL ELECTRIFICATION FOR A THREE (3) YEAR
PERIOD.**

Present: Michael Gaweseb (Chairperson) with Kenandei Tjivikua, Mekondjo
Nghipandulwa, Tulimeyo Kaapanda and Done Brinkman concurring.

Heard : 09 February 2021

Decided : 09 February 2021

REVIEW PANEL ORDER

Having heard Mr. Mbushandje Ntinda (of Sisa Namandje & Co.) for the Applicant, and Mr. Kahenge S. Haulofu for the Respondent, and other interested parties who attended the physical and virtual hearing proceedings; and further having read the Application for Review and other documents filed as part of the record, the Public Procurement Review Panel subsequently found the following:

The Applicant is disputing the disqualifying reasons given by the Respondent, which formed the basis of the Review Application, inter alia;

1. *Failure by the applicant to provide relevant reference letters as per Instructions to Bidders ITB 5.2 (a) (14 which reads;*

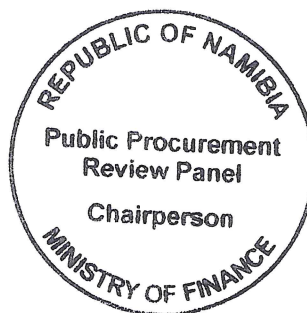
“Submit at least 3 reference letters from clients which serve as proof (reference letters from previous clients) of past successful rendered work in respect of Rural Electrification Consultancy Services in the last 3 years. (Track record of past projects). The track record must indicate the bidder has successfully completed a minimum of three reference projects in the last 3 years. Letters must indicate where work was done, list the project scope and cost and whether satisfactorily completed and attach a copy of a duly certified completion certificate. The reference letter must also indicate who the project manager was for the client with the full name and position.”

The Review Panel noted that the above cited ITB did not define the scope of work in details, as it pertained to the LV and MV technology. Furthermore, the Review Panel noted that the Respondent highlights that a reference letter - which pertains to off-grid projects - submitted by the Applicant was found to be inconsistent with NamPower's Rural Electrification scope, yet that aspect was not indicated as a disqualification factor in the Instructions to bidders. The Review Panel also observed that the Respondent had a slightly different definition of the word "rural" which was said to refer to unserviced virgin lands as opposed to rural areas and settlements. The Respondent through their legal representative present admitted that the ITB may have created ambiguity in that there was no reference to LV and MV technology neither was there a formally gazetted document to verify the definition of "rural" in the context of rural electrification.

Given the above, the Review Panel noted that with an ITB which is not specific, there was room for various interpretations as it pertains to the ITB which lacked specific detail which later formed the grounds of disqualifying the Applicant. The Review Panel concurred in regards to violation of Section 52 (9) which requires bids to be evaluated according to the criteria and methodology set out in the bidding document.

In the result, the Review Panel makes the following order:

1. The Review Application is upheld.
2. In the premise and in accordance with Section 60 (b) of the Public Procurement Act 15 of 2015, direct the Board or Public Entity that has acted or proceeded in a manner that is not in compliance with this Act to act or proceed in a manner that is in compliance with this Act.
3. The Respondent is directed to evaluate the Applicant's bid as they were unfairly excluded from the evaluation process, due to alleged non-compliance with ITB 5.2 (a) which was the Respondent failed to prove. The Bid must be evaluated according to the wording of ITB 5.2 (a).



MR. MICHAEL. GAWESEB

CHAIRPERSON: PUBLIC PROCUREMENT REVIEW PANEL (i.r.o. this matter)