



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 10 MARCH 2021

IN THE MATTER BETWEEN

Protecton Engineering

Applicant

AND

NAMIBIA POWER CORPORATION
(PTY) LTD (NAMPOWER)

Respondent

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

**BID NO: G/ONB/NPWR-02/2021: Supply, Delivery AND OFFLOADING OF
VARIOUS MV & HV Current Transformer.**

**Present: Fillemon Immanuel (Chairperson) with Selma-Penna Utonih, Petrina
Johannes, Hellen Amupolo, Michael Gaweseb.**

Heard : 10 March 2021

Decided : 10 March 2021

REVIEW PANEL ORDER

The meeting took both the physical and virtual modes.

Having heard **Mr Alastair Aspara** for the First Applicant and **Mr. Victor Gabrial**, duly nominated by **Mr. K.S Haulofu** (Managing Director) for the First Respondent and other interested parties who were joined in terms of Regulation 42(5) (a) of the Regulations (hereinafter referred to as the Regulations) to the Public Procurement Act, No. 15 of 2015 (hereinafter referred to as the Act) and having read the Applications 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.

The Applicant alleged that it had not received the post-bid clarification request from the First Respondent sent on 03 November 2020. As a result, it was unable to respond thereto on the set deadline of 04 November 2020. Further, that it only learned about the said request for clarification on 02 February 2021 when it received a notice of selection for the award and responded on 08 February 2021, by providing the clarification then requested.

Because the application did not contain the prayers that the Applicant wants to be answered, the Review Panel requested the Applicant to specifically state the issues requiring adjudication and the prayers sought.

1. Grounds for review

The Applicant summarized the grounds of the review as follows:

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1.1 The time given to respond to the request for clarification

The Applicant relying on clause 32.2 of the Instructions To Bidders (ITB) indicated that the one day given to respond to the request for clarification was unreasonable and they could not have provided an adequate response in such a short period.

The Review enquired with this concern was raised with the First Respondent during the request for reconsideration in terms of Regulation 38(2)(c) of the Regulations to the Public Procurement Act. The Applicant answered that this was the case.

In response, the First respondent indicated that other than this issue being raised for the first time, the amount of time afforded bidders in responding to the requests for clarification is often dependent on the complexity of the issue in respect of which clarification is sought. In the present matter, the clarification sought was on straightforward matters, hence one day was reasonably sufficient.

The Review Panel enquired if it would make a difference whether or not the time afforded the Applicant then, in November 2020, was sufficient, when the Applicant did not respond and only managed to do so as recent as 08 February 2020 (six days after receipt of the notice), which response the Applicant wants to the First Respondent to still consider.

The Applicant later conceded that this issue is not taking its case further, hence did not pursue it further.

1.2 The requested clarifications were immaterial for the bid evaluation purposes

The Applicant alleged that issues in respect of which the clarifications were sought are not material to warrant disqualification. The First Respondent contested this version and demonstrated that the clarifications sought went to the core of the bidding requirement. For example, some had to do with the dimensions of the items that the Applicant offered as alternatives to the specified items in terms of the bidding documents.

1.3 The First Respondent be ordered to consider the Applicant's responses to the request for clarification provided on 08 February 2020

The Applicant insisted the First Respondent did not consider its responses to the request for clarification provided on 08 February 2020, hence must be ordered to do so. The First Respondent indicated it considered the responses and decided it was not going to re-open the bid-evaluation process, which has since closed because this would have placed the First Respondent in non-compliance with Regulation 7(3) of the Regulations to the Public Procurement Act.

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2. Finding(s) of the Review Panel

The specific findings of the Review Panel were as follows:

2.1 The time given to respond to the request for clarification

In light of the Applicant having decided not to pursue this matter further, the Review Panel could make a finding in relation thereto.

2.2 The requested clarifications were immaterial for the bid evaluation purposes

The Review Panel found that the requested clarifications were material to the evaluation process.

2.2 The First Respondent be ordered to consider the Applicant's responses to the request for clarification provided on 08 February 2020

The Review Panel found that indeed the First Respondent had considered the responses of the Applicant and proceeded to respond in the manner that it did, however, the response was unacceptable to the Applicant. Further, had the First Respondent re-opened the evaluation process in the absence of any omission or inconsistency on its part, this would have placed it in non-compliance with Regulation 7(3).

Furthermore, it was found that the First Respondent was compliant with other relevant provisions of the Act, Regulations and the bidding documents, specifically ITB 32.2.

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

- a) That the application for review against the First Respondent is dismissed in terms of Section 60(a) of the Public Procurement Act, 2015 (Act No. 15 of 2015) for lack of substance.
- b) This Order is effective 10 March 2021.


FILLEMON WISE IMMANUEL
CHAIRPERSON: REVIEW PANEL (i.r. of this matter)

