



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 23 FEBRUARY 2021

IN THE MATTER BETWEEN

BICON NAMIBIA CONSULTING ENGINEERS AND
PROJECT MANAGERS (PTY) LTD

APPLICANT

AND

ROADS AUTHORITY

RESPONDENT

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

BID NO: SC/RFP/RA-05/2020 - CONSULTANCY SERVICES FOR DETAIL DESIGN, TENDER DOCUMENTATION, CONTRACT ADMINISTRATION AND SITE SUPERVISION OF THE WEIGHBRIDGE FACILITIES IN RUNDU, KAVANGO EAST REGION.

Present: Kenandei Tjivikua (Chairperson) with, Michael Gaweseb, Paulina Kandali Iyambo, Selma-Penna Utonih and Doné Brinkman concurring.

Heard : 23 February 2021

Decided : 25 February 2021

REVIEW PANEL ORDER

Having heard Mr. Wilfred Brock for the Respondent, and Mr. Kobus Van Der Merwe for the Applicant, 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:

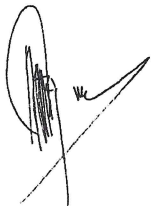
1. That the Respondent when carrying out the aforesaid procurement process, acted contrary to the provision of Section 52 (5) of the Public Procurement Act, Act 15 of 2015, when they corrected arithmetic errors without notifying the concerned bidders as provided for in the Act.
2. That the Respondent further acted contrary to the provision of Section 52(9) of the Public Procurement Act, Act 15 of 2015, when they scored the Applicant lower on the basis that they failed to provide two (2) upcoming consultants as per the Instructions to Bidders (ITB) when the Applicant indeed complied with the provision which was not specific about the type of upcoming consultants required. This action resulted in the Applicant scoring 10 points less which was critical to them qualifying for selection for the award, given that the variance in scores between them and the selected bidder was only 0.8%.
3. That the Respondent acted contrary to the provision of Section 49 (2) of the Public Procurement Act, Act 15 of 2015, when they assumed that bidders accepted the request for extension of the bid validity period, when bidders were required to indicate their choice by

ticking agree or disagree. All bidders signed without indicating whether they agreed with exception of Bicon Namibia Consulting Engineers and Project Managers (Pty) Ltd, who was the only bidder that signed and also ticked the box that they agreed to the extension of the bid.

Having due regard to the above, the Review Panel noted that the failure by all other bidders except the Applicant (Bicon Namibia Consulting Engineers and Project Managers (Pty) Ltd) to indicate that they agree to the extension of the bid validity and sign the form provided by the Respondent for the extension, resulted in the lapse of their bid validity, hence the Applicant's bid remains the only valid bid.

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 given that they were unfairly disqualified on the basis of not having provided two (2) upcoming consultants, when evidence to the contrary exists.
4. The Applicant was the only bidder who adhered to both provisions of the bid validity extension form, which required consent as well as signature, thus their bid remained the only valid bid as per the provisions of Section 49 (2) of the Public Procurement Act 15 of 2015. The remaining bidders failed to indicate whether they agreed or disagreed with the request for extension of bid validity period. One cannot assume that signing the form is an agreement, as provision was made on the form for the bidder to either agree or disagree with the bid validity.



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

