



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 209 2319

Fax : (00 264 61) 236454

Head Office,
Moltke Street,
Private Bag 13295,
Windhoek

Enquiries: M.R. Jonga

IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 27 JANUARY 2021
IN THE MATTER BETWEEN

MORGAN AND QUEEN MEDICAL SUPPLIES APPLICANT

AND

THE SWAKOPMUND MUNICIPALITY 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: SUPPLY AND DELIVERY OF IPERL ELECTROMANGNETIC WATER
METERS AND AGB900 WATER METER BOXES**

**Present: Ono-Robby Nangolo (Chairperson) with Paulina Kandali Iyambo,
Brownny Mutrifa, Tulimeyo Kaapanda and Fillemon Wise Immanuel
concurring.**

Heard : 27 January 2021

Decided : 27 January 2021

REVIEW PANEL ORDER

Having heard Ms K. Samson from Sisa Namandje on behalf of the Applicant, Mr. Alfeus Benjamin for the Public Entity (Swakopmund Municipality) and other interested parties who attended the physical and virtual hearing. Having read the Application for Review and other documents filed as part of the record, the Review Panel subsequently find the following:

1. The Review Panel observed that the Respondent disqualified the Applicant in the evaluation process of this particular bid due failure to submit a certified proof of SABS certification or equivalent as per the ITB 12.1(h) instructions to bidders.
2. The Review Panel further established that while the responded expected the applicant to have certified the SABS certificate with the Namibian Police or Commissioner of Oath, such was not clearly indicated in the ITB as the particular Instructions to Bidders simple read “ **Certified proof of SABS certification or equivalent**”. This is vague considering the fact that certification is done by various professionals depending on the field of operation and context, thus is open for interpretation.
3. The Review Panel learned that there is currently only one South African Supplier where the required water meter devices are sourced from and both applicant and respondent confirmed it. The contested certificate submitted by the Applicant which led to the disqualification of the Applicant and other bidders is issued by the only known supplier of the required devices. As such, disqualifying the applicant on the basis of failure to provide a certified copy of the SABS certification amounted to an unfair evaluation process, considering the wording of the ITB12.1 (h)
4. The Review Panel also had regard to the definition of the word responsive which the Public Procurement Act 15 of 2015 defines as “*in relation to a bid, means responsive to the basic requirements of a bid regarding ability to perform and complete on time*”.

The Panel noted that certification would not have any bearing on the responsiveness of the bidder.

5. The applicant complied with the said provision hence the respondents misdirected themselves by cancelling the bid in terms of Section 54(1) (a) of the Public Procurement Act 15 of 2015.

In the result the Review Panel make the following order:

1. That the application against the Respondents is upheld.
2. That the Review Panel sets aside the decision of the Swakopmund Municipality to cancel the bidding process as it is not in compliance with the Act, and refer the matter back to the Public Entity with specific instructions, in terms of section 60(c) of the Act.

The Instructions are as follows;

3. That the Swakopmund Municipality obtain the necessary authorisation from the Policy Unit to extend the bid validity period, if so desired, in order to allow finalisation of the bidding process.
4. That the Public Entity is directed to evaluate all bidders who submitted the SABS or equivalent certification.



ONO-ROBBY NANGOLO
CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)

