REPUBLIC OF NAMIBIA

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 2099111
Fax : (00 264 61) 236454
Telex: 908-3369

Enquiries: **M. Jonga**

10 John Meinert Street
Fiscus Building
Private Bag 13295
Windhoek

IN THE PUBLIC PROCUREMENT REVIEW PANEL HELD ON 21 JANUARY 2019

IN THE MATTER BETWEEN

LAPAKA NAMIBIA DIRECTORIES (PTY) LTD (APPLICANT)

AND

CENTRAL PROCUREMENT BOARD OF NAMIBIA (RESPONDENT)

APPLICATION FOR REVIEW IN TERMS OF SECTION 59 OF THE PUBLIC PROCUREMENT ACT, ACT 15 OF 2015:

BID NO: NCS/ONB/CPBN-01/2018
FOR: COMPILATION & SUPPLY OF PRINT DIRECTORY, ADVERTISING SPACE AS WELL AS DEVELOPMENT & MAINTENANCE OF ONLINE DIRECTORY & SALE OF THE ADVERTISING SPACE FOR A PERIOD OF THREE (3) YEARS.

1. BACKGROUND

1.1 Following the cancellation of the bid process above by the Central Procurement Board of Namibia ("CPBN") on the 29th November 2018, one of the bidders, namely Lapaka Namibia Directories (Pty) Ltd, launched an Application for Review on 11 January 2019 in terms of Section 59 of the Public Procurement Act, Act 15 of 2015 (hereinafter referred to as "the Act").

1.2 The Applicant contested the cancellation of the bid process on the basis of the following:

1.2.1 The Applicant alleges that the Notification of Cancellation of Bid Process letter by the CPBN, did not provide reasons and was vague as it only states "All Bid are non-responsive." In the absence of any valid and substantive explanation, the applicant objected to the decision made by the CPBN.

1.2.2 The Applicant further submitted that they have submitted all the required documents necessary to consider Lapaka Namibia Directories as a compliant bidder.

1.2.3 The bidder went on to challenge the timing of the Bid Evaluation Process.

2. RELIEF SOUGHT BY THE APPLICANT

2.1 The Applicant requested the Review Panel to review the decision made by CPBN of cancelling the bid process and also obtain full details of the applicant's non-responsiveness.

2.2 The Applicant further wishes to know which board meeting of the CPBN made such cancellation decision, four months into the bid evaluation process and requested the way forward on the cancelled bid.

3. PROCESS FOLLOWED IN CONSIDERATION AND DETERMINATION OF THE REQUEST

3.1 The Review Panel at its own accord and in accordance with of regulation 42(5) of the Public Procurement Act, 2015 (Act No. 15 of 2015) joined TDS Namibia being one of the bidders as well as Telecom Namibia (Public Entity) as the contract owner to the review proceedings. For all intent and purposes, the two are interested parties.

3.2 It follows therefore, that the following parties attended the review proceedings and accordingly were afforded an opportunity to make oral representation and/or further submissions in favour of their respective positions regarding the matter at hand:

- Lapaka Namibia Directories;
- Central Procurement Board of Namibia;
- Telecom Namibia; and
- TDS Namibia.

4. FINDINGS OF THE REVIEW PANEL

4.1 The Review Panel observed non-compliance by the CPBN with Regulation 7(3) of the Public Procurement Regulations: Public Procurement Act, 15 of 2015.

4.2 The Review Panel observed that there was no proper technical evaluation done, due to inadequate use of the scoring matrix during the bid evaluation process.

4.3 The Review Panel found that TDS Namibia should have been disqualified in terms of section 50(2) of the Public Procurement Act, 15 of 2015 as opposed to saying its bid was non-responsive.

4.4 The Review Panel observed that the criteria provided for under ITB 5.3 and 5.4 respectively, do not constitute disqualifying grounds, but only those provided for under ITB 5.5 (minimum qualifying criteria in terms of non-compliance by any applicant would lead to disqualification).

4.5 In light of 4.4 above, the Review Panel further found that the Evaluation Committee of the Central Procurement Board of Namibia, is permitted in terms of ITB 5.2(b) to request documents and/or information envisaged under ITB 5.3 and 5.4 respectively, from any bidder that failed to submit same during the bidding process. These requests could have been any time after the closing and/or during evaluation.

4.6 At what point during the evaluation process did the Evaluation Committee of the CPBN call the provisions of ITB 5.2(b) into motion? Alternatively, CPBN failed to produce evidence that it opted not to exercise the discretion implied under ITB 5.2(b), which in any event should have had the effect as per 4.4 above.

5. REVIEW PANEL DECISION

5.1 Having considered all factual records produced and submitted by both the Applicant and the Respondents (CPBN and joined interested parties), together with affidavits as well as oral representations by parties and all other incidental records pertaining to the bid process in question;

5.2 Having further considered the case in its totality in terms of Section 58, 59 and 60(e) of Act 15 of 2015, read with its Regulations,

THE REVIEW PANEL, HEREBY

(a) In terms of Section 60 (e) confirm the decision of the Central Procurement Board of Namibia to cancel the bidding process;
(b) The effect date of this order is from 24 January 2019.

7. REASONS FOR THE REVIEW PANEL DECISIONS

7.1 The Review Panel upheld the decision of the CPBN to cancel the bidding process, not because of the non-responsiveness of the bidders, including the one submitted by the applicant, to criteria provided for in terms of ITB 5.3 and 5.4 of the bid document as advanced by CPBN, but because of non-compliance on either side as follows:

7.1.1 Non-compliance with Regulation 7(3) by the CPBN, which turned to be material to the continuation of the bidding process;

7.1.2 Non-compliance with Section 50(2) of the Public Procurement Act. 15 of 2015 by TDS Namibia, should have led to the disqualification of its bid; and

7.1.3 Non-compliance with minimum qualifying criteria in terms of ITB 5.5 of the bid document by Lapaka Namibia Directories, rendering its non-responsive in terms of Section 54(1)(a) of the Public Procurement Act. 15 of 2015.

REPUBLIC OF NAMIBIA
Public Procurement Review Panel
24 JAN 2019
MINISTRY OF FINANCE

MS. DONÉ BRINKMAN
CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)