



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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The order of the Public Procurement Review Panel in the matter between

CEPM CONSULTING ENGINEERS

APPLICANT

AND

KAMANJAB VILLAGE COUNCIL

RESPONDENT

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

In the matter between

CEPM CONSULTING ENGINEERS

APPLICANT

AND

KAMANJAB VILLAGE COUNCIL

RESPONDENT

Coram: Paulina Iyambo (Chairperson), with Tulimeyo Kaapanda, Selma-Pennah Utonih, Michael Gaweseb and Dr Rainer Trede concurring.

Heard: 16 July 2019

Decided: 16 July 2019

ORDER

Having heard Mr. E. Zimba for the Applicant, Mr. J.B Namaseb for the Respondent, the Review Panel makes the following order:

1. That the procurement proceedings be terminated and start afresh in terms of Section 60 (f) of the Public Procurement Act, Act No. 15 of 2015 on the grounds that the respondent violated Regulation 35 of the Public Procurement Regulation as the deadline for the submission of Bids was less than 30 days from date of publication of the Bid;
2. Non-compliance with Section 52 (9) in that the Public Entity failed to evaluate bids according to the criteria and methodology set out in the bid document;
3. Non-compliance with Section 55 (5) as the award was made on 5 July 2019, which was the last day of the standstill period.

REASONS FOR THE ORDER

BACKGROUND

- [1] On 10th of June 2019, the Kamanjab Village Council invited bidders in terms of Section 35 (1) of the Public Procurement Act, 15 of 2015, Request for Proposals: Bid Reference number SC/RP/KVC-WNK-001/2019 - The provision of Civil engineering services for Kamanjab Ext 2 and Ourab informal settlement water reticulation services. Three bidders were invited to participate in the procurement process.
- [2] The bid evaluation commenced on 18 June 2019 and indicated as concluded on the 28 June 2019, as per documents submitted.
- [3] Following the notice for selection of award, which was issued on 28 June 2019 to bidders, the Public Entity received an objection from CEPM Consulting Engineers requesting for reasons as to why their Bid was unsuccessful during the standstill period which ran from 29 June 2019 - 5 July 2019 which is in line with Regulation 38(2) (c) of the Public Procurement Regulation: Public Procurement Act, Act No. 15 of 2015 (hereinafter referred to as "Regulations").
- [4] The Public Entity on 5 July 2019 in line with Section 55 (5) of the Act, awarded the bid to CLEVIMA Consulting Engineers, after addressing the grievance letter received from CEPM Consulting Engineers.
- [5] It is against this background, that the Applicant filed an Application for Review on 10 July 2019, for the decision of the Respondent to be reviewed on the grounds contained herein below.

GROUNDINGS FOR REVIEW APPLICATION

- [6] The Applicant contested the outcome of the bidding process in terms of Section 59 (1) (b) of the Act citing the following grounds for the review application:
 - 6.1 The Applicant alleges that the Public Entity did not follow their own award criteria as described in point 8 of their invitation letter.

- 6.2 The Public Entity did not use their own evaluation criteria as described in section 12 of the terms of reference in the bidding document, page 8 and 9 award the bid to the highest responsive bidder, none of the bidders scored 70% therefore no bidder should have been awarded.
- 6.3 Violation of Section 55 (1) as the applicant had the lower price than the awarded Bidder.

RELIEF SOUGHT FROM THE REVIEW PANEL

- [7] The Applicant request the Review Panel for an order in terms of Section 60 (d) of the Public Procurement Act No.15 of 2015.

PROCESSES FOLLOWED IN CONSIDERATION AND DETERMINATION OF THE REQUEST

- [8] The Review Panel in considering this matter, used the documents submitted and oral evidence obtained by the Applicant, the 1st Respondent and the 2nd Responded to arrive at its decision. Both, the Applicant and the Respondent were present at the review proceedings to provide further clarification or additional documents for submission to the Review Panel.
- [9] The Review Panel has in terms of Regulation 42(5)(a) of the Public Procurement Act of 2015 joined the following interested parties, to the proceedings as per the *audi alteram partem rule*, as enshrined in Article 18 of the Namibian Constitution;
- (a) CEPM Consulting Engineers (Applicant)
 - (b) CLEVIMA Consulting Engineers (Awarded Bidder)
 - (c) WSL Engineers and Projects

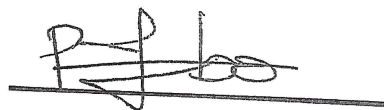
There was no representative present from WSL Engineers and Projects.

- [10] The Review Panel in considering this matter, used the documents submitted and oral evidence obtained by the Applicant, the 1st Respondent and the 2nd Respondent (Clevima Consulting Engineers) to arrive at its decision. Both, the Applicant and the Respondents were present at the review proceedings to provide further clarification or additional documents for submission to the Review Panel.

FINDINGS OF THE REVIEW PANEL

- [11] The Review Panel observed non-compliance with Regulation 35 in that the Public Entity set the deadline for submission of Bids 8 days after the date of publication of this invitation.
- [12] The Review Panel also observed non-compliance with Section 55 (5) as the award was made on 5 July 2019, which was the last day of the standstill period.
- [13] The Review Panel further observed non-compliance with Section 52 (9) in that the Public Entity failed to evaluate bids according to the criteria and methodology set out in the bid document. The bid document indicated consultants scoring a total of 70 marks on the overall assessment shall be considered for the assignment. However, from documents presented, no bidder obtained the 70 marks. The Public Entity explained that this was an arithmetic error.
- [14] In the result the Review Panel makes the following order;
1. That the procurement proceedings be terminated and start afresh in terms of Section 60(f) of the Public Procurement Act, Act No. 15 of 2015 on the grounds that the respondent violated Regulation 35 of the Public Procurement Regulation, as the deadline for the submission of Bids was less than 30 days from date of publication of the Bid;

Dated at Windhoek, this 22th day of July 2019.



PAULINA IYAMBO
CHAIRPERSON: REVIEW PANEL (IRO THIS MANNER)

