



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

OMBALA SECURITY SERVICES CC

APPLICANT

and

MUNICIPALITY OF SWAKOPMUND

RESPONDENT

REASONS FOR THE ORDER

BACKGROUND

- [1] On 02 November 2018, Municipality of Swakopmund (hereinafter referred to as "Respondent") advertised a bid for Provision of Security guards to the Municipality of Swakopmund: NCS/ONB/SM-001/2018 Open National Bidding.
- [2] The bid closed on the 05th of December 2018 and the Evaluation of Bids commenced on the 06th of February 2019.
- [3] Following the Notice of Award, which was sent out on the 09th of May 2019, the Public Entity received objections from unsuccessful bidders to reconsider or review the selection for award to Ombala Security Services (hereinafter referred to as "Applicant") during the standstill period 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 Chief Executive Officer having received objections from bidders, referred the matter back to the Procurement Committee for reconsideration, whereby the Procurement Committee resolved that the award to Ombala Security Services be provisionally withdrawn and that the award be referred back to the Bid Evaluation Committee for re-assessment.
- [5] The Respondent's Bid Evaluation Committee recommended to the Procurement Committee that the bid be terminated and start afresh on the grounds of violation of Section 7 (3) of the Regulations.
- [6] On the 3rd of June 2019 the Procurement Committee resolved that the abovementioned bid be cancelled. The notice for cancellation letter was sent out on the 4th of June 2019.
- [7] It is against this background, that the Applicant filed an Application for Review on the 13th of June 2019, for the decision of the Respondent to be reviewed on the grounds contained herein below.

GROUND FOR REVIEW APPLICATION

[8] The Applicant contested the outcome of the bidding process citing the following grounds for the review application:

8.1 The Applicant alleged that the Public Entity misdirected itself and committed an error when it purportedly cancelled Bid Number. NCS/ONB/SM-001/2018 in terms of Section 60 (f) of the Public Procurement Act, No. 15 of 2015 (hereinafter referred to as "Act"). The aggrieved bidder further alleged that the Public Entity has no authority to exercise any of the decisions or powers that are provided for in terms of Section 60 of the Public Procurement Act since such powers are reserved for the Review Panel appointed by the Minister in terms of Section 58 of the Public Procurement Act. Therefore, the act of the Public Entity of cancelling the bid in terms of Section 60 (f) amounted to usurpation of powers of the Review Panel.

8.2 The Applicant further stated that Public Entity acted without due regard to the interests of the Applicant when it cancelled the bid in terms of Section 60 (f) notwithstanding the Public Entity's own findings that the objections or concerns raised by the unsuccessful bidders did not warrant enough grounds for the withdrawal of the bid.

8.3 The Applicant further alleged that the Public Entity misdirected itself and erred when it relied on the provisions of Section 63 (1) (a) in cancelling the bid without providing sufficient grounds or reasons as to why it would not be in the public interest to award the contract to the applicant.

RELIEF SOUGHT FROM THE REVIEW PANEL

[9] There is no indication from the Applicant's Review Application as to the type of relief the bidder was seeking from the Review Panel. However, during verbal submissions made during the Review Hearing, the Applicant indicated that his request is for the initial decision of the Public Entity of their intention to award to the Applicant to stand.

PROCESSES FOLLOWED IN CONSIDERATION AND DETERMINATION OF THE REQUEST

[10] The Review Panel has in terms of Regulation 42 (5) (a) of the Public Procurement Act of 2015 joined interested parties, to the proceedings as per the *audi alteram partem* rule. The bidders, who attended the review proceedings, were:

- (a) Maya Security Services;
- (b) Maletsky's Investment CC;
- (c) Kahatjipara Security Services;
- (d) Gotty Dausab Trading CC;
- (e) Ombala Security Services;
- (f) TTN Investment CC; and
- (g) Security Training College of Namibia.

The following Bidders submitted written apology letters:

- (a) Group Two Investment CC
- (b) Namibia Protection Services

[11] The Review Panel in considering this matter, used the documents submitted by both parties, as well as oral evidence obtained from both the Applicant, the Respondent and other interested parties 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.

FINDINGS OF THE REVIEW PANEL

[12] The Review Panel having considered all documents and oral evidence from both the Applicant and the Respondent discovered that the Review Application brought before the

Review Panel was admitted in contravention of Regulation 42 (1) of the Regulations as the complete Review Application was brought late.

[13] The Review Panel observed that there was non-compliance with Regulation 7 (3) of the Regulations, as the timeframe for process of examination and evaluation of bids was exceeded by 30 days.

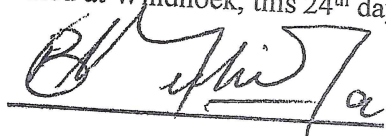
[14] The Review Panel further observed non-compliance with Regulation 7 (2) of the Regulations as the Bid Evaluation Committee commencement date should have been on the 10th of December 2018, which is exactly 5 days after bid opening. The Bid Evaluation Committee only commenced on the 06th of February 2019.

[15] The Review Panel took note of the bid validity period which was 90 days, and expired on the 5th of March 2019. At the time of the BEC making a recommendation to the Procurement Committee, the bid documents had expired making any decision therefore null and void.

[16] In the result the Review Panel makes the following order:

1. That the Application is dismissed in terms of Section 60 (a) of the Public Procurement Act, Act No. 15 of 2015 on the grounds that the application was not brought before the Review Panel in line with Regulation 42 (1) of the Public Procurement Regulations: Public Procurement Act, Act No. 15 of 2015 and;
2. 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 Public Entity contravened Regulation 7 (2) and (3) of the Public Procurement Regulations: Public Procurement Act, Act No. 15 of 2015.

Dated at Windhoek, this 24th day of June 2019.



MR. BROWNY MUTRIFA
CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)

