



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCOUREMENT REVIEW
HELD ON 06 AUGUST 2019

IN THE MATTER BETWEEN

WINDHOEK CONSULTING ENGINEERS (PTY) LTD

and

NKURENKURU TOWN COUNCIL

APPLICANT

RESPONDENT

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

BID NO:

**2/2019/NKU: MULTI-ENGINEERING CONSULTANCY SERVICES FOR
CONSTRUCTION OF MUNICIPAL SERVICES AND BUILDING CONSTRUCTION**

**Coram: Michael Gaweseb (Chairperson), with Donè Brinkman, Kenandei
Tjivikua, Tulimeyo Kaapanda and Rainer Trede.**

Heard: 06 August 2019

Decided: 06 August 2019

ORDER

1. REVIEW PANEL DECISIONS

- 1.1 In terms of Section 60(f) of the Public Procurement Act No.15 of 2015, the Review Panel orders that the procurement proceedings in the aforementioned matter be terminated and start afresh; and
- 1.2 The effective date of this order is from 6 August 2019.

REASONS FOR THE ORDER

BACKGROUND

1. On 14 June 2019, the Nkurenkuru Town Council (hereinafter referred to as "Respondent") invited bidders in terms of Section 35(1) of the Public Procurement Act, for proposals for Bid Reference Number 2/2019/NKU in respect of Multi-engineering consultancy services for construction of municipal services and building construction.
2. There is no bid evaluation commencement date indicated as per documents submitted, however, the Respondent informed the Review Panel that the information appearing in the documents submitted was accurate.
3. Following the notice for selection of award, which was issued by the Respondent on 23 July 2019 to bidders, the Public Entity received an objection from Windhoek Consulting Engineers (WCE) to reconsider or review the selection for award to DEKA Consulting Engineers during the standstill period which ran from 12 to 18 July 2019 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 23 July 2019, in line with Section 55(5) of the Act, awarded the bid to DEKA Consulting Engineers, without addressing the grievance letter received from Windhoek Consulting Engineers.
5. It is against this background, that the Applicant filed an Application for Review on the 26th of July 2019, for the decision of the Respondent to be reviewed on the grounds contained herein below.

GROUND FOR THE REVIEW APPLICATION

6. The Applicant contested the outcome of the bidding process citing the following grounds for the review application:
 - 6.1 The Applicant alleges that the Public Entity deviated from the bidding document requirements when they did not follow correct procedures as per the Public Procurement Act No.15 of 2015.
 - 6.2 The Public Entity had no bidding document in place and proceeded to award on strength of the Expression of Interest.
 - 6.3 The Applicant further alleges that no criteria was provided to bidders and therefore, requested to know on what basis a selection was made in the absence of a selection criteria.

RELIEF SOUGHT FROM THE REVIEW PANEL

7. The Applicant requested the Review Panel for an order in terms of Section 60(f) of the Public Procurement Act No. 15 of 2015.

PROCESSES FOLLOWED IN CONSIDERATION AND DETERMINATION OF THE REQUEST

8. 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 following parties were joined to the Review proceedings:

- (a) B &P Consulting Engineers;
- (b) Bicon;
- (c) Lithon Project Consultants;
- (d) Artee Project Engineers;
- (e) Lucio Gabadinho;
- (f) Aurecon;
- (g) CEPM Consulting Engineers;
- (h) Zambezi Consulting Engineers;
- (i) Telios Namibia Consulting;
- (j) D&P Consulting Engineers;
- (k) Denchi;
- (l) Clevima Consulting Engineers;
- (m) Orbit Consulting Engineers;
- (n) Lund Consulting Engineers;
- (o) Tweya Consulting Engineers;
- (p) WSL Engineering and Consulting;
- (q) NDI Project Engineers;
- (r) Namu Consulting Engineers;
- (s) Krenz Consulting Engineers;
- (t) Hendri Herselman Quality Surveyors;
- (u) Seal Consulting Engineers;
- (v) Omkumoh Consulting Engineers; and
- (w) ENI Consulting Engineers.

All bidders were duly notified by way of facsimile as provided for under Regulation 57 of the Procurement Regulations, however some choose to refrain from attending the review proceedings and only 14 (fourteen) bidders attended the Review hearing.

9. The Review Panel, in considering this matter, used the documents submitted by both parties as well as oral evidence obtained from both the Applicant and Respondent to arrive at its decision. Both the Applicant and the Respondent were present at the review proceedings to provide further clarification to the Review Panel.

FINDINGS OF THE REVIEW PANEL

10. The Review Panel observed non-compliance with Section 43(1) of the Procurement Act, Act 15 of 2015 as there were no bid documents offered or used during the bidding process.
11. The Review Panel observed Non-compliance with Section 51 (1) of the Procurement Act, Act 15 of 2015 as the process was devoid of the bid opening time and place as well as the fact that prices were not read or recorded during the bid opening session.
12. The Review Panel further observed non-compliance with Section 52 (9) of the Procurement Act, Act 15 of 2015 in that the Public Entity failed to evaluate the bids received according to the criteria and methodology set out in the expression of interest.
13. In the result the Review Panel makes the following order:
 - 13.1 In terms of Section 60(f) of the Public Procurement Act No.15 of 2015, the Review Panel orders that the procurement proceedings be terminated and start afresh; and
 - 13.2 The effective date of this order is from 6 August 2019.



MICHAEL GAWESEB Chairperson
CHAIRPERSON: REVIEW PANEL (PRO THIS MATTER)