



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

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

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

TULU TRADING ENTERPRISES

and

MARIENTAL MUNICIPALITY

JAMES AND YOUNG TRADING ENTERPRISES CC

APPLICANT

1ST RESPONDENT

2ND RESPONDENT

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

In the matter between

TULU TRADING ENTERPRISES

APPLICANT

and

MARIENTAL MUNICIPALITY

1ST RESPONDENT

JAMES AND YOUNG TRADING ENTERPRISES CC

2ND RESPONDENT

Coram: Dr. Petrina Johannes (Chairperson), with Ono-Robby Nangolo, Paulina Iyambo, Sem Toska and Amon Ngavetene concurring.

Heard: 09 May 2019 and 21 May 2019

Decided: 21 May 2019

ORDER

Having heard Ms. Loini Shikale-Ambondo for the Applicant, Ms. Nelao. N Shilongo for the 1st Respondent and Kadhila Amoomo for the 2nd Respondent, 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.
2. The order to suspend the award of the bid reference number W/ONB/MM/01/2018 Construction of the new fire station at Mariental, Hardap Region, in terms of Section 59(2) of the Public Procurement Act, Act No. 15 of 2015 is hereby lifted.

REASONS FOR THE ORDER

BACKGROUND

- [1] On 11 December 2019, Mariental Municipality (hereinafter referred to as "1st Respondent") advertised a bid for the construction of a new fire station in Mariental, Hardap Region with bid reference number: W/ONB/MM/01/2018 Open National Bidding.
- [2] The bid closed on the 25 January 2019, the Evaluation of Bids commenced on the 12 March 2019 and 11 April 2019.
- [3] Following the Notice of Award, which was sent out on the 18 April 2019, the Applicant lodged an objection and appealed the decision of the intent to award the bid to James and Young Trading Enterprises cc (hereinafter referred to as "2nd Respondent") on the 02nd of April 2019 in terms of Section 55 of the Procurement Act No. 15 of 2015.
- [4] The 1st Respondent considered the applicant's appeal at the Bid Evaluation Committee meeting held on 11 April 2019. Thereafter, 1st Respondent proceeded with awarding the bid to 2nd Respondent on 18 April 2019.
- [5] It is against this background, that the Applicant filed an Application for Review on the 29th of April 2019, for the decision of the 1st Respondent to be reviewed on the grounds contained herein below.

GROUND FOR REVIEW APPLICATION

- [6] The applicant contested the outcome of the bidding process citing the following grounds for the review application:
 - 1. The applicant alleged that he has complied with all the tender requirements.
 - 2. The applicant further alleges that the bid has been awarded to the 2nd Respondent with the full knowledge of undisputed omissions on evaluating their bid following the outcome of a briefing meeting that took place.
 - 3. The applicant alleged that their price was lower than that of the awarded bidder.
 - 4. The Applicant alleged that there were discrepancies and irregularities in the evaluation of his bidding documents, which were picked up and admitted by the 1st Respondent during a meeting that was held after the Applicant's representative objected and appealed. This meeting resulted in the 1st Respondent, Mariental Municipality requesting for the re-evaluation of all bidding documents by the bid evaluation committee on 11 April 2019.
 - 5. The Applicant further stated that the reason for the bid being awarded to the 2nd Respondent is, because they scored the highest combined "technical and financial" score which cannot be used as the determining factor.

6. The Applicant further alleged that his company passed the technical evaluation phase, and was the leading lowest financial bidder therefore the tender should have been awarded to them.

RELIEF SOUGHT FROM THE REVIEW PANEL

- [7] The applicant request the Review Panel for an order in terms of Section 60 (b) and /or Section 60 (c) and/ or 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 joined all interested parties in terms of Regulation 42(5)(a) of the Public Procurement Act of 2015, to the proceedings as per the *audi alteram partem rule*, as enshrined in Article 18 of the Namibian Constitution. The following bidders attended the review proceedings held on 09 May 2019 together with officials from the Mariental Municipality (1st respondent):

1. James and Young Trading Enterprises cc (2nd Respondent)
2. Tulu Trading Enterprises cc (Applicant)
3. Geckoh Fifty-Eight Investment cc
4. RJD Enterprises cc
5. Vega Investment cc JV Knox & Jox Trading Enterprise cc
6. K&G Bricks cc
7. Tulinavo Investment Group
8. Shalom Park Properties Patriots Investment cc
9. Ndakalimwe Investment cc
10. Nekuru Trading Enterprise
11. KK Target Trading cc
12. Nghoshi Investment cc
13. Elan Investment cc JV with Hongtai Construction Trading cc
14. J. Groenewald Properties cc

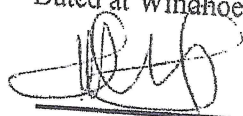
- [9] Following the review proceedings on the 09 May 2019, it was resolved that additional clarification be sought from the 1st Respondent, specifically on the detailed criteria used in the technical evaluation of the bids, in order to conclude the review application. In addition, an exemption from Section 59(3) in terms of Section 4 (1) of the Procurement Act no. 15 of 2015 was granted by the Minister valid until 24 May 2019. The review proceedings resumed and came to its conclusion on 21 May 2019.

- [10] The Review Panel in considering this matter, used the documents submitted by both parties as well as oral evidence obtained from the Applicant, 1st Respondent, 2nd Respondent and other interested parties to arrive at its decision.

FINDINGS OF THE REVIEW PANEL

- [11] The Review Panel observed that Dunamis Consulting Engineers and Project Managers (Pty) Ltd designed the building and did the cost estimate for the engineering. A staff member from the aforementioned engineering company was a member of the Bid Evaluation Committee that considered the bid in question. Section 26(1)(c) and (9) of the Act provides for a Public Entity to co-opt persons from other public entities to assist or serve as members of the bid evaluation committee.
- [12] The Review Panel noted that the evaluation criteria for determining the successful bidder was included in the bidding documents in Section IV- Evaluation Criteria. The instruction clearly indicated that the successful bidder will be determine from a combined technical (70%) and financial (30%) scoring.
- [13] The Review Panel noted the bidding document contained a section on technical evaluation and financial evaluation. The technical section was divided in several sub-sections with the total scores for each sub-section indicated. However, the Review Panel noted that the breakdown of the overall scores for some sections was not indicated in the tender document. The Review Panel then requested for a full break-down of the criteria used to determine the technical scores given that the information in the tender documents was not sufficient. A detailed report was shared with the Review Panel by the 1st Responded on 15 May 2018 for review and consideration.
- [14] Having reviewed the technical evaluation criteria used for the technical scoring, the scoring matrix and the technical scores given the bidders by the BEC, The Review Panel could not find any material evidence to support probability of favoritism in as far as points allocation is concerned in arriving to the successful bidder.
- [15] 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.
 2. The order to suspend the award of the bid reference number W/ONB/MM/01/2018 Construction of the new fire station at Mariental, Hardap Region, in terms of Section 59(2) of the Public Procurement Act, Act No. 15 of 2015 is hereby lifted.

Dated at Windhoek, this 05th day of June 2019.



DR. PETRINA JOHANNES
CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)

