REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 04 FEBRUARY 2025

IN THE MATTER BETWEEN

NETVEND METERING SOLUTIONS CC	**APPLICANT**
and	
GIBEON VILLAGE COUNCIL	**1ST RESPONDENT**
ARVO INVESTMENT CC	**2ND RESPONDENT**
AQUA SERVICES AND ENGINEERING CC	**3RD RESPONDENT**
ITEM ENGINEERING CC	**4TH RESPONDENT**
THUNDERSTORM INVESTMENT CC	**5TH RESPONDENT**
TEKNON ELECTRICAL CC	**6TH RESPONDENT**

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

BID NO G/ONB/GVC-14/2024-2025: SUPPLY, DELIVERY AND INSTALLATION OF PRE-PAID WATER METERS TO GIBEON VILLAGE COUNCIL

Coram: Hellen Amupolo (Chairperson) with Donè Brinkman, Lukas Kudumo Siremo, Michael Gaweseb and Ehrenfried Honga concurring.

Heard : 04 February 2025
Decided : 04 February 2025

REVIEW PANEL ORDER

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1. INTRODUCTION

1.1. The Review Panel was constituted in terms of section 58 (1) of the Public Procurement Act, 2015, as amended to hear an application lodged by the Netvend Metering Solutions CC, hereinafter referred to as the "Applicant", the Gibeon Village Council, a public entity, hereinafter referred to as the "Respondent'' and others.

1.2. Having heard Dineo Namoya for the Applicant, and other interested parties who were joined in terms of Regulation 42(5) (a) of the Public Procurement Regulations (hereinafter referred to as the "Regulations") of the Public Procurement Act No. 15 of 2015, as amended, (hereinafter referred to as the "Public Procurement Act" or "Act"); and having read the application for review and other documents filed as part of the record, the Review Panel made the following findings and made the subsequent order hereunder towards the end.

2. APPLICANT'S REQUEST AND PRAYERS TO THE REVIEW PANEL

2.1 The Applicant stated in its review application that the First Respondent's decision to award the bid to the Second Respondent be set aside;

2.2. Further, to set aside the First Respondent's decision to disqualify the Applicant;

2.3 Directing the First Respondent to correct it's decision and award the bid to the Applicant;

Alternatively, directing the First Respondent to re-evaluate the bids including the bid of the Applicant;

2.4 An order suspending the awarding of the bid pending the finalization of the review proceedings; and

2.5 Further or alternative relief contemplated in terms of Section 60 of the Public Procurement Act that the Review Panel may find appropriate.

3. GROUNDS FOR REVIEW AS CONTAINED IN THE APPLICANT'S REVIEW APPLICATION.

It is the Applicants view that the First Respondent's decision is liable to be set aside because of the following:

3.1 The Applicant stated that they submitted the required reference letters and the First Respondent has refused them an opportunity to inspect its bid submission.

3.2 The Applicant further stated that the bid was not reserved for SME's and the SME certificate was therefore not required.

3.3 Thirdly, the Applicant stated that they are the lowest most responsive bidder, therefore they should have been awarded the bid;

3.4 Fourthly, the selected bidder (Second Respondent) failed to attend a compulsory bid clarification meeting and should have been disqualified on that basis.

3.6 Lastly, the selected bidder (Second Respondent) failed to provide three (3) reference letters of previous work done as required in the bid data sheet and thus their technical capacity is refuted.

4. APPLICANT'S REPRESENTATIONS DURING THE HEARING PROCEEDINGS.

4.1 The Applicant stated that on 30 October 2024, the First Respondent advertised a bid for Supply, delivery and Installation of Pre-Paid Water Meters to Gibeon Village Council, Bid No: G/ONB/GVC-14/2024-2025.

4.2 On 19 December 2024, the First Respondent issued a notice to award to all bidders, however the executive summary was not provided and it indicated that all bidders were responsive.

4.3 The Applicant submitted that they sent a letter to the First Respondent and thereafter an application for reconsideration which was sent on the 23 December 2024 and on 31 December 2024, the First Respondent issued a new notice to award along with an executive summary. Conversely, the executive summary stated that the applicant was not awarded the bid because they did not attach an SME certificate and they did not provide three reference letters as required.

4.4 The Applicant argues that the reference letters were indeed provided and the SME certificate was not a requirement for this particular bid.

4.5 The Applicant submitted that they requested to inspect their bid since the executive summary only stated that the documents were missing but does not confirm that they were not submitted.

4.6 The Applicant refutes the technical capacity of the Second Respondent and thus have demanded to be provided with details for the references of previous work done by the Second Respondent.

4.7 The Applicant referred the Review Panel to their founding affidavit and included Annexure H7A, on page 11 and H number 5 which outlined the required documentary evidence. It states that an SME certificate is needed for bids reserved for SMEs. Further, the applicant argues that this bid was not reserved for SMEs but was a national bid and not exclusively for SME's.

4.8 Lastly, the Applicant stated that they provided the lowest economically substantially responsive bid and thus should stand competitively when compared to the Second Respondent.

5. FINDINGS OF REVIEW PANEL

Having considered the available documents and discussions, the Review Panel made the following findings:

5.1 That, the BID NO: G/ONB/GVC-14/2024-2025- Supply, Delivery and Installation of Pre-Paid Water Meters to Gibeon Village Council did not make exclusive provision for SME's and thus the SME certificate was not required. Additionally, the public entity consented to this observation. The ITB 12.1 (h) (5) state, *The Bid shall comprise the following: have a certificate indicating SME Status (for Bids reserved for SMEs);*

5.2 Regarding the three (3) reference letters or completion certificates required from previous clients, the Review panel confirmed that the Applicant submitted one (1) appointment letter, one (1) completion certificate and one (1) reference letter and therefore could not confirm either three (3) completion certificates or three (3) reference letters were submitted as required.

5.3 The Review Panel also noted that the bid advert indicated a pre-bid meeting to be compulsory, however the bid data sheet was void of this requirement as part of the evaluation criteria and thus it cannot be used as part of the evaluation criteria.

5.4 The Public Entity confirmed that the Second Respondent submitted a bid where they are in a joint venture with a company possessing the substantial experience as required. This was also confirmed by the Review Panel in the meeting.

5.5 Lastly, the Review Panel also confirmed that the Instructions to Bidders was also void of indicating the applicable thresholds of the lower and upper limit of 15%, thus applying this as part of the evaluation criteria introduces a new criterion and is against Section 52(9) of the Public Procurement Act 15 of 2015.

6. DECISION OF THE REVIEW PANEL

With a view to the above, the Review Panel orders the following based on a majority decision:

6.1 In terms of section 60(c) of the Public Procurement Act 15 of 2015, the Review Panel hereby sets aside the decision of the First Respondent to award to the Second Respondent with the following instructions:

6.1.1 To re-evaluate all bids from Stage 1 of the evaluation process; and

6.1.2 To evaluate in accordance to Section 52 (9) of the Public Procurement Act 15 of 2015, i.e. in line with the bid data sheet as indicated in the bidding document.

6.2 The public entity shall provide proof of implementation of this Order to the Procurement Policy Unit within thirty (30) days from receipt of this Order, with a copy of such report submitted to the Review Panel Secretariat.

6.3 The effective date of this Order is 04 February 2025.

Republic of Namibia
Ministry of Finance & Public Enterprises
Public Procurement Review Panel
Chairperson

Hellen Amupolo
CHAIRPERSON: (for this matter)