



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 22 MAY 2024**

IN THE MATTER BETWEEN

D-MARIAH COMPUTER SOLUTION CC

APPLICANT

and

**CENTRAL PROCUREMENT BOARD OF NAMIBIA
STANDARD BANK NAMIBIA
& 3 OTHER RESPONDENTS**

**First RESPONDENT
Second RESPONDENT**

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

**BID NO: NCS/ONB/CPBN-01/2023 – PROVISION OF PAYMENT SOLUTIONS FOR
FUEL, HEAVY LUBRICATION OIL, EMERGENCY REPAIRS CARDS, CAR WASH,
LICENSING, AND ROADWORTHNESS FEES TO THE MINISTRY OF HEALTH
AND SOCIAL SERVICES FOR A PERIOD OF 36 MONTHS**

**Coram: Lukas Siremo Kudumo Chairperson), with Tulimeyo Kaapanda, Ehrenfried
Honga, Selma-Penna Utonih and Gilbert Habimana.**

**Heard: 22 May 2024
Decided: 22 May 2024**

REVIEW PANEL ORDER

1. INTRODUCTION:

- 1.1 A hybrid meeting was held, using both physical and virtual modes.
- 1.2 Having heard **Mr. Ndeli Ndaitwah** for the Applicant, **Mr. Festus Hamukwaya** on behalf of the First Respondent, and other interested parties who were joined in terms of sub-regulation 42(5)(a) of the Public Procurement Regulations (hereinafter referred to as “the Regulations”) to the Public Procurement Act, 2015 (Act No. 15 of 2015) (hereinafter referred to as “the 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 subsequent order hereunder towards the end.

**2. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICANT’S
APPLICATION FOR REVIEW:**

- 2.1 The Applicant submitted that the 50% members' interest indicated on the Applicant’s Founding Statement is a typing error and that the Applicant holds 100% of the members interest in the Applicant and same is confirmed in a letter dated 5 April 2024 from the Business and Intellectual Property Authority (BIPA) wherein it confirmed that: “Kindly take note that the entity herein discussed was incorporated on 09 October 2015 bearing the registration number CC/2015/12709. Since the entity’s inception to date, Mr. Petrus Shipanga (Mr. Petrus) with Identification number 87062200395 has been the only member bearing 100% members’ interest.”

2.2 the Applicant stated that if its intention was to submit a Founding Statement to BIPA with the intent of having only one member holding 50% of the members interest, the Applicant's registration would not have been approved by BIPA as same would be in contravention with Section 38 of the Close Corporations Act, 1988 Act 26 of 1988 which states that:

“ The aggregate of the members' interests in a corporation expressed as a percentage shall at all times be one hundred per cent.”

3. APPLICANT'S SUBMISSIONS AT THE REVIEW PANEL HEARING:

- 3.1 The Applicant stated that, as per the Executive summary, their bid was deemed non-responsive due to the Founding Statement indicating 50% ownership. The Applicant submitted further that the 50% members interest indicated on the Applicant's Founding Statement is an error and clarified that the Applicant holds 100% of the members interest in the company and same is confirmed in a letter dated 5 April 2024 from the Business and Intellectual Property Authority (BIPA).
- 3.2 Based on the information provided above, the Applicant further contends that an amended Founding Statement (CC2) was mistakenly processed and approved, incorrectly indicating Mr. Petrus Shipanga as owning a 50% interest instead of the entire 100% membership interest in the entity.
- 3.3 The Applicant reiterated that it owns 100% membership and that there is a letter attached to its Application marked as Annexure G which clearly states that the entity was incorporated on 09 October 2015 bearing the registration number CC/2015/12709 and that since the entity's inception to date, Mr. Petrus Shipanga with Identification number 87062200395 has been the only member bearing 100% member's interest.
- 3.4 Further, the Applicant submitted that page 44 of its submitted bid under Section iv, the Applicant made it clear that Mr. Petrus Shipanga is 100% owner of the entity. The Applicant further stressed that its bid price is lower than that of the selected bidder.
- 3.5 The Applicant mentioned that despite the Executive Summary suggesting disqualification at stage 1, they were among the bidders called for a system demonstration during stage 4 of the evaluation process.

RELIEF SOUGHT:

- 3.6 The Applicant seeks an order to refer the matter back to the First Respondent for reconsideration, with specific instructions to re-evaluate the Applicant's bid in accordance with the Act.

L.K

4. FIRST RESPONDENT'S SUBMISSION AT THE REVIEW PANEL HEARING:

- 4.1 The First Respondent stated that the Applicant was properly disqualified. Evaluation criteria on page 30 of the bidding documents clearly states that the bidders' submission will either be responsive or non-responsive. Bidders deemed non-responsive to any of the above administrative requirements will be disqualified from the entire evaluation process and will not be considered further. The Respondent submitted that the Bid Evaluation Committee was guided by the provision of Section 52(9) of the Act which requires the evaluation of all bids to be in line with the criteria and methodology set out in the bidding document.
- 4.2 The First Respondent elaborated on the mandatory requirements stating that the bidding document explicitly states that the bidder must show 51% equity ownership by Namibian citizens. However, the founding statement provided by the Applicant only showed 50% membership interest held by Namibian citizens, which does not meet the stipulated requirements of the bidding documents.
- 4.3 Further, the First Respondent stated that it is worth noting that the BEC was not privy to the letter from BIPA, which the Applicant submitted with its reconsideration application after the conclusion of the evaluation of bids. When submitting its bid, the Applicant had a responsibility to ensure that the founding statement reflected the necessary members' interest. Any reliance on an alleged oversight by BIPA is presented as an afterthought and an ineffective attempt to influence the First Respondent's decision to disqualify its bid.

5. FINDINGS OF THE REVIEW PANEL:

Having heard the Parties at the Review Panel Hearing and having considered the written submissions of the Parties, the Review Panel made the following findings:

- 5.1 The First Respondent adhered to the provisions outlined in Sections 52(9) of the Act during the evaluation process and that the Applicant did not comply with requirement of ITB 3.1.1.
- 5.3 That the content within the Applicant's Founding Statement is incorrect and fails to conform the guidelines outlined under Section 38 of the Close Corporation Act.
- 5.4 That based on the bid document submitted by the Applicant, it was sufficient for the First Respondent to evaluate the bid and Section 52(1) would have been wrongly applied.
- 5.5 That the letter submitted by the Applicant purported to be a confirmation from BIPA that it BIPA made a mistake in 2018 to issue the document was an after thought and this was never submitted during bid submission. In addition the Applicant was aware about this mistake and had sufficient time from 2018 to correct the amended founding statement.

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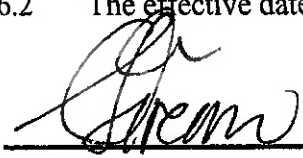
6. DECISIONS OF THE REVIEW PANEL:

In the premise of the above, the Review Panel orders that:

6.1 In terms of Section 60 (a) of the Public Procurement Act, 2015 as amended, the Review Panel hereby dismiss the application.

6.2 That in terms of Section 60(e) of the Public Procurement Act, 2015 as amended the Review Panel confirms the decision of the Board.

6.2 The effective date of this Order is 22 May 2024.



Mr. Lukas Siremo Kudumo
CHAIRPERSON: REVIEW PANEL (Public matter)