REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW

HELD ON 23 FEBRUARY 2024

IN THE MATTER BETWEEN

NUTRIFOOD (PYT) LTD JV TRADEVEST HOLDING GROUP	**FIRST APPLICANT**
AGRIMILL COMMERCIAL (PTY) LTD	**SECOND APPLICANT**
AND	
CENTRAL PROCUREMENT BOARD OF NAMIBIA	**RESPONDENT**

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

BID NO: G/OAB/CPBN-01/2023: SUPPLY AND DELIVERY OF FOOD ITEMS FOR MARGANALIZED COMMUNITIES PROGRAM ON A QUARTERLY BASIS (4 TIMES) PER YEAR FOR A PERIOD OF THREE YEARS

Present: **Paulina Kandali Iyambo (Chairperson) with Doné Brinkman, Browny Mutrifa, Michael Gaweseb and Selma-Penna Utonih concurring.**

Heard : **23 February 2024**
Decided : **23 February 2024**

REVIEW PANEL ORDER

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1. INTRODUCTION

Having heard **Mr. Shaun Ellis** for the First Applicant, **Mr. Kadhila Amoomo** for the Second 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 (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 made the subsequent order hereunder towards the end.

2. BACKGROUND FOR REVIEW APPLICATIONS

The First Applicant stated that they only provided an SME Certificate for Tradevest Holding Group (Pty) Ltd but not for the other Joint Venture partner Nutrifood (Pty) Ltd and was therefore deemed unresponsive. The particular Bid was never clearly advertised or indicated to Bidders that it was only reserved for SME's and to this day they still do not know whether this Bid is reserved for SME's only, although the Bid document indicate that SME certificates are only needed for bids reserved for SME's.

" 3.9 ITB 12.1 (h) 5 Has a bidder provided a valid certified cipy of SME certificate status(for Bids reserved for SMEs).....

The First Applicant further stated that they hereby apply for a re-evaluation of their Bid, based on 3.9 ITB 12.1 (h) 5 and submit that this Bid was not advertised or reserved for SME's only.

The Second Applicant stated that on page 102 of the bidding document, clause 9.2, it is a requirement that bidders submit a sample of the bag in which the maize that shall be supplied

and delivered shall be contained in. This stereotype, being the sample bag, contains information pertaining to the product being supplied and delivered and the company name. This as we can see is a qualifying requirement of the bid that bidders were supposed to satisfy. Being a registered milling company, we were however approached by the successful bidders who requested our services in that we supply them maize as they been awarded with this bid.

The Second Applicant further proceeded to request for their stereotype of the sample of the bag that they had submitted so that we package the maize in accordance to the required and approved sample as per bid requirements, and to our shock this particular bidder had no knowledge of the sample bag we were requesting for, which gave them a reason to believe that their award was questionable if they even had no knowledge or existence of the sample bag requested for which was one of the qualifying requirements.

The Second Applicant stated respectfully request a thorough review and reconsideration of the decision to award the abovementioned tender to a specific number of bidders as stated in the official Notice for selection document. Our concern arises from a detailed examination of the original tender document, specificially on Page 103, under Clause 10 titled Quality Control.

1. **FIRST APPLICANT'S GROUNDS FOR REVIEW DURING HEARING PROCEEDINGS- NUTRIFOOD (PTY) LTD JV TRADEVEST HOLDING GROUP (PTY) LTD**

The First Applicant stated that their Bid was declare as a non-responsive because they only submitted the SME Certificate for Tradevest Holding Group and not for the Joint Venture partner Nutrifood (Pty) Ltd as required in ITB 12.1(h) (5) on page 16. The ITB 12.1 (h) (5), read: *"have a certificate indicating SME Status (for Bids reserved for SMEs)"*

The First Applicant further stated that Nutrifood (Pty) Ltd is a joint venture with Tradevest Holding Group (Pty) Ltd and Tradevest Holding Group (Pty) Ltd is an SME which they have provided the SME Certificate, this bid is not restistrict to the SMEs. The Applicant stated that their bid disqualification is unlawful and the decision of the Respondent should set aside and they want their Bid to be re-evaluated.

The First Applicant stated that in the reconsideration from Central Procurement Board of Namibia (CPBN) on 21 December 2023, stated that the following ITB 12.1 (h)(5) of the standard bidding documents required bidders to provide a valid certified copy of a SME Certificate for bids reserved for SMEs. In the case of the Joint Venture each Joint Venture partner must comply with the requirement.

2. SECOND APPLICANT'S GROUNDS FOR REVIEW DURING HEARING PROCEEDINGS – AGRIMILL COMMERCIAL (PTY) LTD

The Second applicant stated that they relate on two pages, page 102 and 103 set out the issues of packaging and marking aswell as issues relating to quality control. Their bid was non-compliance in packaging and marking on page 102, clause 9.2 and non-compliance on quality and control on page 103, clause 10 of the bidding document.

The Second Applicant further stated that as soon as the notice of selection of award was issued successful went to Agrimill Commercial (Pty) Ltd to seeks assistance in order to supply them with the technical requirement. This obviously initiated that the Applicant was one of the successful bidder when the Applicant discovered that the successful bidders did not complied with clause 9.2 on page 102 and clause 10 on page 103 of the bidding document, they did not have the necessary packaging and information required. For example the bag must be cleared marked for the public. The successful bidders qualify without having the required sample in terms of clause 9.2 and they did not have quality control requirement as required in clause 10 in the bidding document.

3. 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:

That, on page 102, the suppliers must provide a certificate of fitness. The certificate that is submitted by the successful bidder is not in their name but in the name of Namib Mills.

The Second Applicant (Agrimill Commercial (Pty) Ltd only obliged to served the Review Panel within 7days and not the rest of the interested parties which they served them on the 8th January 2024.

4. DECISION OF THE REVIEW PANEL

The findings of the Review Panel lead to the following decision:

In terms of Ssection 60 (c) of the Public Procurement Act, 2015, the Review Panel hereby orders that the Respondent is further to re-evaluate according to the criteria they have set in the bidding document.

ITB 12.1 (h) (5), does not required the SME Certificate for both parties neither did it indicate that the bid is restricted for SME only.

The issue of Agrimill Commercial (Pty) Ltd the Public Entity should confirm the quality of the bags submitted.

The effective date of this Order is 23 February 2024.

MS. PAULINA KANDJIMI-KAMBO
CHAIRPERSON: REVIEW PANEL (in re. this matter)