



KWAZULU-NATAL PROVINCE

TRANSPORT
REPUBLIC OF SOUTH AFRICA

BRANCH: TIRS

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BIDS CANCELLATION REQUEST

To: Bid Adjudication Committee
Acting Head: Transport: Ms. S Ngubo

Date: 19 October 2020

REQUEST FOR THE CANCELLATION OF THE ADVERTISED TENDERS ZNB 0056/19T: ESTABLISHMENT OF A PANEL OF PROFESSIONAL ENGINEERING SERVICE PROVIDERS FOR (1) ROAD REHABILITATION AND RESEALS, (2) MAJOR STRUCTURES AND (3) NEW INFRASTRUCTURE AND UPGRADE PROJECTS FOR A PERIOD OF 3 YEARS;

AND

ZNB 0050/00000/HOD/GEN/INF/20/T THE APPOINTMENT OF A PROFESSIONAL ENGINEERING SERVICE PROVIDER FOR EACH COST CENTRE FOR A PERIOD OF 3 YEARS.

1. PURPOSE

The purpose of this submission is to request for the Head of Department, to approve the cancellation of the advertised tenders for:

- ZNB 0056/19T: Establishment of a panel of professional engineering service providers for (1) road rehabilitation and reseals, (2) major structures and (3) new infrastructure and upgrade projects for a period of 3 years.
- ZNB 0050/00000/HOD/GEN/INF/20/T: the appointment of a professional engineering service provider for each cost centre for a period of 3 years.

2. BACKGROUND

The Department advertised two tenders for professional engineering service providers on 28 August 2020 where one was to establish a panel (ZNB 0056/19T) and the other was for technical support at Departmental Cost Centres (ZNB 0050/00000/HOD/GEN/INF/20/T). The two tenders were originally meant to close on 30 September 2020; however, the closing date was extended to 23 October 2020.

Prior to the recommended non-compulsory virtual briefing meetings which were held on 16 and 17 September 2020, numerous queries received from service providers interested on submitting the bid. They raised concerns about the mandatory requirement contained in the two bid documents which stated the following:

“Only professional engineering firms that can demonstrate at least 51% management control by professionally registered individuals (as per ECSA and/or SACPCMP), members or owners for a period not less than 2 years on the date of the advertisement of this tender on the Government Tender Bulletin (Proof in a form of certified CIPC documents, partnership agreements, registration of business or delegation of authority for management and technical liability of a professionally registered full-time employee).”

At the briefing sessions, the department provided clarity on the above clause, stating its origin and purpose hence the inclusion on the tender document. The Department further clarified that the management control does include delegated company management as stated in the clause. However, SMEC South Africa (Pty) Ltd was not satisfied with the explanation provided by the Department and initiated legal process to challenge the department on clause citing that the mandatory criteria was *“anti-competitive, biased and believes that it has no relevance to the successful delivery of the services concerned”*.

On 08 October 2020, the Department was served with court papers from SMEC South Africa’s attorneys, Weavind and Weavind Attorneys formally challenging the matter in the Pietermaritzburg High Court on 16 October 2020. SMEC sought an interdict against the Department on the implementation of the above mentioned tenders until their concerns are addressed.

The matter was heard at the Pietermaritzburg High Court on 16 October 2020 and a draft verdict was received on the same day. On the verdict the department conceded to SMEC’s concerns and agreed to to consult with the relevant departmental bid committees on changing the mandatory criteria. The matter was postponed to postponed to the urgent court roll of Wednesday, 02 December 2020 to allow the department to finalise its internal processes. Furthermore, the department agreed to postpone the date for the submission of the Bid Documents from 23 October 2020 to a date to be reflected in the addenda to be published in respect of the tenders which should be after 02 December 2020. This process has resulted in major delays for the department in the implementation of these tenders.

3. PROPOSED BID CANCELLATION

Due to the above issues raised by SMEC South Africa regarding the mandatory criteria and the subsequent legal process, it is proposed that the Department cancels the tender process for these two bids. This will allow the Department adequate time to review the mandatory criteria outside the legal processes. Furthermore, the Department may be able to conclude and re-advertise the bids before the next court date of 02 December 2020 with a revised mandatory criteria resulting in savings on time and legal costs.


4. LEGAL IMPLICATIONS

The cancellation of the bid will allow the department to go back and review the mandatory criteria and re-advertise the bid with a revised mandatory criteria. The concerns raised by SMEC resulting in an application for a court interdict was due to the mandatory criteria on the bids, if this criteria is removed or the bid cancelled, there will be no contention. This will therefore mean that the interdict will fall away preventing further litigations.


5. RECOMMENDATION

It is therefore recommended that the Head of Department approves this submission for the cancellation of the tender process for the two bids ZNB 0056/19T and ZNB 0050/00000/HOD/GEN/INF/20/T to allow the Department to review the Terms of References and re-advertise the bids. The bids will follow the SCM processes of re-advertising.

MR. S. S. NKOSI
DDG: TIRS

SUPPORTED/NOT SUPPORTED

Digitally signed by Wayne Evans
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Date: 2020.10.20 14:05:57 +02'00'
MR. W. EVANS
BAC CHAIRPERSON
DATE: _____

COMMENTS: _____

APPROVED/NOT APPROVED

MS. S NGUBO
ACTING HEAD: TRANSPORT
DATE: 21/10/2020.

COMMENTS: _____

