

DPWI: COVID-19: EMERGENCY PROCUREMENT BEITBRIDGE: 40 KM BORDERLINE INFRASTRUCTURE RSA/ ZIMBABWE BORDER POST

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national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

BACKGROUND

- On 16 March 2020, the Minister of Public Works and Infrastructure issued a directive in terms of Section 27(2)(l) of the Disaster Management Act, No. 57 of 2002, for the emergency safeguarding of the South African border posts. The directive was issued to have the emergency procurement procedure undertaken with immediate effect in relation to the erection and repairs of the border fences, with the priority being Beitbridge Border Post, together and in parallel with the other identified hotspots.
- A directive was issued by the Minister of Public Works and Infrastructure that included the following conditions:
 - The project team to conduct a site visit with the contractor by latest 18 March 2020 to undertake due diligence, secure the brief and personnel needs, determine the provisional costs and identify the emergency construction timeline.
 - The appointment of a contractor to commence work by latest 20 March 2020.
 - That CFO: DPWI shall be advised as to the costs in order to secure the provisions for this emergency variation order. The CFO shall put emergency mechanisms in place for payment of the contractor for work undertaken on a weekly basis.
 - The DDG: Construction Management shall identify competent site managers (1 per hotspot) that will be on site permanently during the rollout of the emergency construction. One project manager would be identified to be responsible for the oversight of the entire project and accountable for the delivery in terms of the expedited timeline
 - A delivery progress report shall be provided to the Minister of Public Works and Infrastructure together with the Minister of Defense on a weekly basis.

MATTERS OF CONCERN

- The Minister's directive contained conditions :
 - That CFO: DPWI shall be advised as to the costs in order to secure the provisions for this emergency variation order. The CFO shall put emergency mechanisms in place for payment of the contractor for work undertaken on a weekly basis.
- The concerns of NT were as follows:
 - **Shall be advised as to the costs** – costs are determined based on determining the needs (site visit) and then the bills of quantities.
 - **Variation order** – means that there is a contractual agreement with the supplier (current supplier)
 - **Payment (weekly basis)** – payment is made on services rendered and against the bills of quantities

DEFINITION OF EMERGENCY PROCUREMENT – LEGISLATIVE PROVISIONS

- Treasury Regulation 16A6.4 states, “if in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority.”
- Practice Note 8 of 2007/2008 states, “should it be impractical to invite competitive bids for specific procurement, the accounting officer / authority may procure the required goods or services by other means, such as price quotations and the reasons for deviating from inviting competitive bids should be recorded and approved.
- Paragraph 8.2 of SCM Instruction Note 3 of 2016/2017 states that an emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls for an agency to action and there is insufficient time to invite competitive bids.

APPOINTMENT OF SERVICE PROVIDERS

- DPWI's National Bid Adjudication Committee (NBAC) approved both bids as follows:
 - On the 18th March 2020 the NBAC approved the appointment of Caledon River Properties CC t/a Magwa Construction (Magwa Construction) in the amount of R37m (Incl. Vat) to provide contractor services ; and
 - On the 19th March 2020 the NBAC approved the appointment of Profteam CC in the amount of R3.2m (Incl. Vat) to provide professional consultants services.

FINDINGS

- Magwa Construction was appointed, for what seemed to be a continuous service requirement and the fact that they were appointed for an unspecified period, makes the “emergency procurement” transaction disputable and can, therefore, not be deemed as emergency procurement.
- The scope of work was determined at the site inspection, hence the appointment and scope of work of the Consultant, i.e. Profteam CC, is not clear as specifications were already available, and it is assumed that their services would, therefore, not have been required.
- It seems plausible that Magwa Construction drafted the BoQ on behalf of DPWI and responded to their own BoQ.
- The clarity of paragraph 14.3 below is needed in order to determine liability.
- It is evident that Magwa Construction submitted the bid proposal prior to the completion of the report by the professional team, which brings the costing of R37 million into question.
- In normal circumstances, a professional service provider will be appointed (engineers, quantity surveyors, etc.) to conduct an assessment to draft the BoQ on which the RFP would be based. In this case Magwa Construction submitted a bid proposal prior to the appointment of the professional team raising the question what services did Profteam CC render and was paid for.

FINDINGS

- The National Treasury could not determine the reasonableness of costing on the BoQ. The accounting officer must obtain an expert opinion on the costing with regards to the requirement, the BoQ and the outcome of the project.
- There is no evidence to indicate that the NBAC decision, to appoint both bidders, were based on justifiable and reasonable grounds taking into consideration that the scope of work was determined at the site inspection.
- Based on the absence of clear commencement and expiry dates in the contracts, National Treasury could not ascertain what is meant by “short to medium term”.
- The National Treasury could not ascertain, from the SBD 4- Declaration of Interest form, if the shareholders/directors are state employees.
- It is not clear which contract the Minister instructed to be varied (as per 2.4.3 of the conditions). The correspondence from the Minister referred to the variation order but did not provide the description of the order or details of the contractor but it would seem the Minister had a contract, supplier or contractor in mind.
- The National Treasury is aware of previous contracts at the border post for this service. It is therefore not clear whether there was an existing service provider and why the DPWI did not utilise the services of the current service provider to maintain and service the Beitbridge border post. Due to the extent of the damage and demolished state of the fence it was evident that the fence was not maintained. This calls into question the “urgency” or “emergency” for a service that is to be a continuous one.

FINDINGS

- In one of the documents submitted, DPWI indicated that both Magwa Construction and Profteam CC were approached with the intention to issue variation order, after receiving the request from the Minister invoking section 27(2)(l) of the disaster Management Act 2002. If the Consultant and Contractor were approached after the Ministerial directive, it poses a question as to the purpose of inviting the other Consultant (VCE) and Contractors (Hillsite Trading, and Asatico) to the site inspection meeting.
- The invoices paid to Magwa Construction does not make provision for the items on the BoQ that were completed. The grounds on which the completion certificate was signed off is not known.
- DPWI indicated that the final payment could not be made due to the investigation process. The department failed to indicate when the instruction for non-payment was received. The date of instruction will also have bearing on the payment of the R21million. It is also not clear what the scope of work was for the outstanding amount and whether it relates to the fencing
- In terms of separation of powers, the Executive Authority, must not interfere in administrative functions.
- The minutes dated 19 March 2020 stated that the contract commencement date is 18 March 2020. This means that the contract took effect at the site inspection meeting prior to the appointments being approved by the NBAC. This transaction may be deemed to be irregular.

RECOMMENDATION

- National Treasury therefore recommends that the emergency procurement on the fencing at the Beitbridge border post be investigated.
- The outcome to determine whether the expenditure incurred was irregular and or fruitless and wasteful.
- the investigation report be submitted to National Treasury – Office of the Chief Procurement Officer.

THANK YOU



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