

REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

Tel: (00 264 61) 209 9111

OFFICE OF THE MINISTER

Head Office

Fax: (00 264 61) 227 702

Moltke Street

Private Bag 13295

Enquiries.....
Mr. P. Nsundano (209 9405)

Windhoek

Our Ref.:

Your Ref.:

Namibia

Mr. Deharno Kloppers

19 November 2021

President**The Namibia Council for Architects and Quantity Surveyors****PO Box 90947****Windhoek**

Dear Mr Kloppers,

REQUEST FOR DIRECTIVE: COMPETITIVE FINANCIAL BIDDING FOR ARCHITECTS AND QUANTITY SURVEYORS IN ACCORDANCE WITH THE ARCHITECTS' AND QUANTITY SURVEYORS' ACT 13 OF 1979

1. Reference is made to your letter dated 15 July 2021 and our letter of 14 September 2021 on the above-mentioned subject matter.
2. The NCAQS has requested the Minister of Finance to issue a directive in terms of the Public Procurement Act, 2015 (Act No. 15 of 2015), declaring that a financial bid, in a public procurement process, may not be less nor may it be in 10% excess of the Minimum Scale of Fees prescribed in the Government Notice 6 October 1998, No. 250, as it may be amended from time to time.
3. Having considered the motivation for the request, I hereby respond as follows:
4. In terms of section 55(1) of the Public Procurement Act, 2015, the *Board or a public entity must award a procurement contract to the bidder having submitted the lowest evaluated substantially responsive bid which meets the qualification criteria specified in the pre-qualification or bidding documents, following the steps outlined in subsections (3) and (4).*
5. Section 55(1) is peremptory in that the Board or a public entity is obliged to award a procurement contract to a bidder with the lowest evaluated substantially responsive bid

which meet the qualification criteria specified in the bidding documents. This means that before the Board or a public entity selects the lowest evaluated substantially responsive bid, the bidder must first meet the qualification criteria specified in the bidding documents.

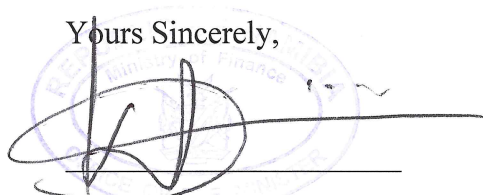
6. Furthermore, section 73 states as follows:

(1) The Minister, pursuant to a policy of the Government or when he or she thinks it necessary or expedient, may direct in writing the Policy Unit, Board or public entity to attend to any aspect or matter of general application relating to procurement of goods, works or services, or to the letting or hiring of anything or the acquisition or granting of any right for or on behalf of the public entities, and for the disposal of their property.

7. Although in terms of section 73 quoted above, the Minister has a discretion to direct public entities or the Board to attend to any aspect or matter of general application relating to procurement, such directive has to be consistent with provisions of the Act.
8. A directive by the Minister of Finance declaring that a financial bid, in a public procurement process, may not be less nor may it be in 10% excess of the Minimum Scale of Fees prescribed in the Government Notice 6 October 1998, No. 250, is beyond the discretionary powers conferred on the Minister of Finance under the Public Procurement Act, 2015. This is because the power to regulate the fees of the Architects and the Quantity Surveyors is vested in the Minister responsible for Works and Transport and the NCAQS in terms of the Architects and Quantity Surveyors' Act, 1978 (Act No. 13 of 1979).
9. Additionally, the onus is on the Architects and the Quantity Surveyors to ensure that their fees are in compliance with the Architects and Quantity Surveyors' Act, 1978, breach of which, they may be punished in terms of that Act. Thus, the NCAQS has the appropriate authority in terms of the Architects and Quantity Surveyors' Act, 1978 (Act No. 13 of 1979) to enforce compliance with that Act, its regulations and the Codes of Conduct for Architects and Quantity Surveyors, in the event of breach.
11. In light of the aforesaid, and given the fact that the executive summary of the bid evaluation report is usually published, it is my considered view that the NCAQS is able to determine whether the price tendered by the successful Architect or Quantity Surveyor is in breach of the minimum fees and can thus, take appropriate measures in terms of its enabling law.

Please accept the assurance of my highest regard.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'IP', is written over a faint circular official stamp. The stamp contains the text 'Minister of Finance' and 'National Council for Architectural and Quantity Surveying'.

**IPUMBU SHIIMI, MP
MINISTER OF FINANCE**