

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 904/08

In the matter between:

**INTERNATIONAL DEVELOPMENT
CONSULTANCY GROUP ENGINEERING
AND MANAGEMENT (PTY) LTD**

APPLICANT

and

**NATIONAL EMERGENCY RESPONSE
COUNCIL ON HIV/AIDS**

1ST RESPONDENT

**OWEN THINDWA & ASSOCIATES
(PTY) LIMITED**

2ND RESPONDENT

**HALL/STACEY ARCHITECTS
& PLANNERS (PTY) LTD**

3RD RESPONDENT

CORAM : Q.M. MABUZA -J
FOR THE APPLICANT : MR. S.B. SHONGWE OF SIBUSISO B.
SHONGWE
FOR THE 1ST RESP. : ADV. FLYNN INSTRUCTED BY
MR. E.J. HENWOOD
FOR THE 2ND RESP. : MR. P. SHILUBANE OF SHILUBANE,
MASEKO AND PARTNERS.

RULING 27/6/08

[1] This application came by way of certificate of urgency for an order in the following terms:

- 1) Dispensing with the provisions of the rules of this Honourable Court as relate to forms, service and time limits and hearing this matter as one of urgency;**
- 2) Interdicting and restraining the 1st Respondent and those acting on its behest from entering and/or engaging the 3rd Respondent in negotiations for the provision of consultancy services of pre-contract and post-contract architectural engineering of a centre to house 1st Respondent's offices.**
- 3) Interdicting and restraining the 1st Respondent and those acting at its behest from engaging the services of the 3rd Respondent by way of signing a contract to perform the consultancy services as stipulated in the Request For Proposals Documents.**
- 4) That if such contract has been signed by the 1st Respondent and 3rd Respondent that same be declared to be null and void and of no force or effect.**
- 5) Declaring the recommendation of the 2nd Respondent to engage the 3rd Respondent in negotiations with the 1st Respondent null and void and not in conformity with the 1st Respondent's Request For Proposals Documents.**
- 6) That alternatively the scores obtained by the Applicant and 3rd Respondent during the adjudication process be referred to an independent Quantity Surveyor for purpose of an assessment in accordance with clause 5.7 of the Request For Proposals Documents.**
- 7) Directing that prayers 2, 3, 4 and 5 hereinabove operate as a rule nisi with immediate and interim effect returnable on a date to be determined by the above**

Honourable Court.

8) Costs of the application on the scale as between attorney and own client;

9) Such further and/or alternative relief.

[2] The Courts findings are as follows: The RFP commences with a letter of invitation dated 24/4/07 signed by the director Derek Von Wissel which in requesting proposals specifically states that

5 (ii) "the Client is not bound to accept any of the proposals".

[3] Para 1.5 of the introduction to section 2 of the RFP states as follows:

"The client is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Consultants".

[4] The 1st Respondent was not contractually bound to accept any proposal and the Applicant has not established a legal right in this regard.

[5] The 2nd Respondent in its evaluation found that the Applicant had not fully complied with the terms and conditions of the RFP that is why it rejected the Applicants proposal. The Applicant when it submitted its financial proposal acknowledged that the 1st Respondent was not bound to accept any proposal in its proposal dated 11/12/07.

[6] A call for tenders is merely an offer or invitation to do

business which can be either accepted or rejected at will. The 1st Respondent had no obligation to accept any such offer.

[7] The Application is dismissed with costs, such costs to include the certified costs of Counsel in terms of Rule 68 (2).

Q.M. MABUZA-J