



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 21st, 28th July and 02 August 2022**

IN THE MATTER BETWEEN

CENTRAL PROCUREMENT BOARD OF NAMIBIA APPLICANT

AND

NEU OLULYA TRADING CC

RESPONDENT

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

**BID NO: W/ONB/CPBN-08/2019: CONSTRUCTION OF NKURENKURE
VOCATIONAL TRAINING CENTRE, KAVANGO WEST REGION**

**Present Brownny Mutrifa (Chairperson) with, Rainer Trede, Ehrenfried Honga,
Hellen Amupolo and Paulina-Kandali Iyambo**

Heard : 21 July 2022

Decided : 02 August 2022

REVIEW PANEL ORDER

Having heard Mrs. Nocola Davids on behalf of Central Procurement Board of Namibia (the Applicant) and Adv. T. Chibwana the Respondent and subsequently having read the application for suspension, debarment and disqualification of bidders filed by the Central Procurement Board of Namibia in terms of Section 68 (2) read with Regulation 46 (1) and other documents filed of record, the Review Panel observed the following:

Grounds for Review

The Central Procurement Board (CPBN) conducted the procurement for the construction of the Nkurenkuru Vocational Training Centre (VTC) in the Kavango West Region on behalf of Namibia Training Authority (NTA). The procurement contract was awarded to Neu-Olulya Trading CC for a period of 24 months to the value of N\$35,561,067.67. The parties entered in contract on 03 September 2020.

The Applicant

The Applicant stated that the preliminary issue is the format of Application and alluded that the law did not make a provision of how the debarment should be structured. The Applicant further affirmed that the Replying Affidavit was valid as it was filed in terms of Regulation 42 (4) of the Public Procurement Regulations. During a monitoring & evaluation site visit by the CPBN in April 2021, it was discovered that there was a poor performance in the implementation of the project by the contractor (Neu-Olulya). Neu-Olulya failed to make substantial progress of the works on the project site, failed to submit updated work programs and did not adhere to the project Manager's instructions.

After being assessed of the bidder's poor performance the Board resolved to determine the contract at its meeting held on 07 October 2021. The contract was determined in terms of Clause 57 (g) of General Conditions of Contract (GCC) for delaying the completion of works.

It is for these reasons that the Central Procurement Board of Namibia applied for suspension and debarment in terms of Section 68 (1) (d) of the Act and Regulation 68 (4) of the Public Procurement Regulations

The Respondent

The Respondent stated in the Replying Affidavit of the Applicant was invalid and further pointed out that when the site was handed over, the Respondent could not commence with the setting out as the Respondent did not have the setting out drawings. It was availed to the Respondent only on the 12 October 2020, 13 days later.

The Respondent submitted that some of the drawings were revised and the electrical subcontractor who was not appointed on time, made it difficult for the Applicant to submit work programs.

The Respondent further stated that they were surprised to receive a letter from the Board on 18 October 2021 informing them that it had approved the determination of the contract. The letter by the Respondent was followed by another letter from NTA dated 20 October 2021 informing the Respondent that its employment under the contract was determined with immediate effect.

Findings of the Review Panel

- 1. That the Respondent was informed that the Project Manager is an agent and since the Respondent has no agreement with the Projector Manager, the Respondent cannot make the project manager party to the dispute.*
- 2. That the Respondent failed at the early stage of the project and contravened Clause 57,2 (g) of contract agreement;*
- 3. That in accordance with the documents submitted before the Review Panel the Respondent acted contrary to Clause 57,2 (a) (fundamental breach of contract shall include, but shall not be limited to: the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Project Manager);*
- 4. That the Respondent ignored communications and failed to carry out the Project Manager's instructions numerous times;*
- 5. The Review Panel further observed that the Respondent applied for the extension of 179 days of the intended completion date in accordance with Clause 26 of the General Conditions of Contract, and they did not get a response from the Principal Agent;*
- 6. That the Respondent supposed to start casting concrete on the 12th August 2021, however the drawing for domestic water and internal sewer were only made available on the 13th August 2021;*

Notwithstanding the foresaid observations, the Review Panel found that this is a high value bid and the key element of obtaining value for money should be a primary function. The Project will cost government additional income apart from the initial budgeted amount.

The Contract agreement clearly indicated as how the payments are to be made by the Applicant to the Respondent and that the Respondent covenants with the Applicant to execute the works and to remedy defects therein in conformity in all respects with the provisions of the contract.

Even though the Panel discerned that there were delays on the Principal Agent, the Review Panel could not establish a well-founded reason why the Respondent failed to execute the full works as per the contract agreement. The numerous communications further support that the contractor demonstrated poor performances as the project works program was delayed significantly before determination was effected. Therefore the panel established that there was non-performance from the Respondent, albeit with mitigating circumstances that the Applicant partially inhibited the progress of the Respondent in the early stages of the project.

DECISION OF THE REVIEW PANEL

In the result, the Review Panel makes the following order:

That on the strength of Section 68(1)(d) of the Public Procurement Act No.15 of 2015, the Respondent is suspended and debarred from participating in procurement activities with all public entities , effective from 2nd August 2022 to 2nd February 2023.



BROWNY NYUTIRIFA

CHAIRPERSON: REVIEW PANEL (I.F. 07/01/2022)

