



REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 18 MARCH 2022
IN THE MATTER BETWEEN**

KAMBWA CONSTRUCTION (PTY) LTD

1ST APPLICANT

AND

**CENTRAL PROCUREMENT BOARD
OF NAMIBIA**

1ST RESPONDENT

**CHAIRPERSON: CENTRAL PROCUREMENT BOARD
OF NAMIBIA**

2ND RESPONDENT

IBUILD SUPPLIES (PTY) LTD

3RD RESPONDENT

TATIANA TRADING ENTERPRISES CC

4TH RESPONDENT

**WEIBA CONSTRUCTION JV TOGETHER ELECTRICAL
SERVICES CC**

5TH RESPONDENT

I.D BUILDING CONTRACTORS CC

6TH RESPONDENT

ALUGHODHI ENGINEERING AND CONSTRUCTION CC

7TH RESPONDENT

AUGUST TWENTY – SIX CONSTRUCTION

8TH RESPONDENT

SANLI CONSTRUCTION CC JV JOHN NAMUSHESHE

9TH RESPONDENT

CONSTRUCTION ANS INVESTMENT CC

10TH RESPONDENT

NEC POWER AND PUMPS (PTY) LTD

11TH RESPONDENT

NGC INVESTMENT CC JV NEU-OLULYA TRADING CC

12TH RESPONDENT

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

**BID NO: W/OAB/CPBN-05/2021: PROCUREMENT OF ESTABLISHMENT OF
HOSTELS AT ONKUMBULA COMBINED SCHOOL IN THE OSHIKOTO REGION –
PHASE 1**

Present: Mary Shiimi - Member and Chairperson
Dr. Rainer Trede – Member
Brownny Mutrifa – Member
Selma-Penna Utonih– Member
Michael Gaweseb – Member

Heard : 18 March 2022
Decided : 18 March 2022

REVIEW PANEL ORDER

The Review Panel meeting held on 18 March 2022, was conducted via physical and virtual modes. Having heard Ms. Kula Simon representing the Applicant, Ms. Nicola David representing the 1st and 2nd Respondents, Mr. Ndeli Ndaitwa and Advocate Chibucina representing the 3rd Respondent and other interested parties joined to these proceedings in terms of Regulation 42(5) (a) of the Public Procurement Act, 2015 (Act No. 15 of 2015) and having studied all documents filed on record, the Review Panel find the following subsequently order hereunder.

1. GROUNDS FOR THE REVIEW BY THE APPLICANT

The review application was based on the grounds that:

The Respondent did not comply with the doctrine of legality and other requirements for fair decision-making as they did not act as contemplated under Article 18 of the Namibian Constitution which requires the public administrative bodies and officials to act in a manner that is reasonable and fair when taking public administrative decisions.

The Applicant claimed that they were disqualified from the bidding process, due to the fact that misleading information was provided, and the Applicant was not informed about such decision taken by the Respondent.

The Applicant declared that no misleading information was provided, but merely submitted completion certificates belonging to Kambwa Trading CC, for the purposes of their profiling.

When enquire about the disqualification from the bidding process by the Applicant, on 01 March 2022, they were informed on 3 March 2022 via e-mail that the response will be forwarded on 7 March 2022, i.e. on the last day of the standstill period. However, no response has been received. The Applicant was only informed by the Executive Summary that the Board declined the recommendation of the BEC to award the contract to Kambwa Construction Pty Ltd on the basis that it submitted deceiving and misleading information in line with section 67(1) (a) of the Act read with ITB 4(a).

The Applicant claimed to be a responsive bidder who met all the requirements.

The Applicant requests the Review Panel to review the decision of the 1st and 2nd Respondents and prays that the case be referred back for the public entity to re-evaluate all responsive bidders.

2. THE APPLICANT

The Applicant claimed that the 1st and 2nd Respondent grossly failed to inform the Applicant of its decision. The Applicant only became aware of the disqualification on the date of publication for the notice for selection of award.

The Applicant further claimed that they do not know what the misleading information appears to be and do not know in terms of which standards of ethics it was debarred, disqualified, or suspended, as the 1st Respondent's decision was based on Section 67 of the Public Procurement Act, 15 of 2015. This section could not be relied upon by the Respondent, but is rather relied on by the Review Panel.

The Applicant claimed it was a responsive bidder who met all the requirements. The completion certificates for Kambwa Trading CC were incorrectly regarded as false by the 1st Respondent, as all documents are valid, the company's completion certificates were submitted with the Bid documents.

The Applicant submitted certificates for Kambwa Trading CC as part of their profile not as certificates for works completed as stated by the 1st Respondent, all documents are valid, no false and misleading documents were submitted.

The Applicant request the Review Panel to review the decision of the 1st and 2nd Respondents, prays that the case be referred back to the public entity for re-evaluation.

3. THE 1ST AND 2ND RESPONDENTS

The 1st and 2nd Respondents stated that the Applicant was disqualified in terms of ITB 4.1 (a) and the 1st Respondent merely conveyed the conduct of the Applicant, which detected false and misleading information in its bid. This indicates the meaning of section 67(1)(a) of the Public Procurement Act, (Act 15 of 2015) which deals with fraudulent practice.

The 1st and 2nd Respondents further stated that some of the required documents submitted and on which bidders were evaluated in line with the Evaluation Criteria was the provision of Practical Completion Certificates. The Applicant deliberately and with clear intention to mislead the 1st Respondent submitted four (4) completion certificates belonging to Kamba Trading CC and also works completed by Kamba CC (which is not the bidding company). The 1st and 2nd Respondents stated that the Applicant's bid was therefore not substantially responsive.

The 1st and 2nd Respondents stated that it was indeed a fraudulent act to include documents from a different company as the risk lies in the fact that the incorrect certificates were not picked up

and the bidder been selected for award. The Board found that there was an attempt to mislead the process.

The 1st and 2nd Respondents states that the Board has the power to accept or reject a bid. The board can still take a decision to apply to the Review Panel for debarment or suspension of the applicant.

Considering the above, the 1st and 2nd Respondents requested that the Review Panel dismiss the application.

4. FINDINGS OF REVIEW PANEL

The Review Panel found that:

- The Applicant Kambwa Construction (PTY) Ltd submitted completion certificates for Kambwa Trading CC. However, the BEC considered this by scoring the Applicant with 0 points if a bidder provides not more than 3 practical completion certificates in the bidding document.
- Since the completion documents clearly indicate that they are from Kambwa Trading CC this cannot be fraud.
- According to Section 67(3) of the Act the Board must promptly notify the bidder and the Anti-Corruption Commission in case of fraudulent practice. This has not been done.
- The Board has no power to suspend, debar or disqualify a bidder. This power is only with the Review Panel according to Section 68 of the Act.
- According to Section 9(1) the Board has no power to correct the decisions of the BEC.
- The Board did not apply a standstill period of 7 days as per Regulation 38(2)(d)

5. DECISION OF THE REVIEW PANEL

In the premises, the Review Panel make the following order:

5.1 In terms of Section 60(b) of the Public Procurement Act, 2015 (Act No. 15 of 2015), the Review Panel hereby orders that all responsive bidders be re-evaluated in line with the Instruction to Bidders (ITB).

5.2 The effective date of this Order is 18 March 2022.



MARY SHIIMI
CHAIRPERSON: REVIEW PANEL (R.O. THIS MATTER)

