



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW HEARING

HELD ON 16 MARCH 2023

IN THE MATTER BETWEEN

KABILA'S PROPERTY CC

APPLICANT

AND

ORANJEMUND TOWN COUNCIL

KWY INVESTMENT CC

BENTON TRADING CC

EQUITY TECHNICAL & SUPPLY

DANNY'S BUILDING CONSTRUCTION

RIO CIVIL SERVICES PTY (LTD)

NUUYO INVESTMENT SERVICES

KING MANDUME CONSTRUCTION

ZERO SIX FIVE TRADING

ROYAL CONTRACTORS JV RECOVMA INVESTMENT

EARTH WORKS BUILDING & CIVIL CONTRACTORS

1ST RESPONDENT

2ND RESPONDENT

3RD RESPONDENT

4TH RESPONDENT

5TH RESPONDENT

6TH RESPONDENT

7TH RESPONDENT

8TH RESPONDENT

9TH RESPONDENT

10TH RESPONDENT

11TH RESPONDENT

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

BID NO: W/ONB/ORTC 04/2022/2023—MAINTENANCE OF BUTIMEN ROADS IN ORANJEMUND

Present: Fillemon Wise Immanuel (Chairperson), with Ehrenfried Honga, Michael Gaweseb, concurring. Tulimeyo Kaapanda and Paulina Kandali Iyambo

Heard : 16 March 2023
Decided : 16 March 2023

REVIEW PANEL ORDER

The meeting took place using both physical and virtual modes.

Having heard Ms. Tekla Itula representing the Applicant, and Ms. Mercy Kemp representing the 1st Respondent, and having read the application for review in terms of Section 59(1) of the Public Procurement Act, 2015 (Act No.15 of 2015) (hereinafter referred to as the “Act”), read with Regulation 42 of the Public Procurement Regulations: Public Procurement Act, 2015 (hereinafter referred to as the “Regulations”).

Having read the application for review and other documents filed as part of the record, the Review Panel, in respect of the matter, and on various points *in limine* raised made the following findings and subsequent order.

1. POINTS *IN LIMINE* RAISED BY THE PARTIES

1.1 The points in *limine* raised were:

First Respondent

1.1 The 1st Respondent while placing reliance on the judgement in the case of *Elite Construction Ce v Helen Amupolo & Others*, asserted that that there was no Application for Review, deserving of the Review Panel’s adjudication. The aforesaid case upheld a judgement in the case of *Paragon investment (Pty) Ltd JV China Huayun Group v Chairperson: Review Panel*, where the court held at para 21, that:

“It is furthermore, clear as day, that a review application is one accompanied by a founding affidavit to place evidence before the Review Panel, and it must be lodged with the Review Panel. That is exactly the reason why other bidders, or any interested person is required to file a “replying affidavit” as contemplated in regulation 42(4) of the Public Procurement Regulations in answer to the averments contained in the founding affidavit”.

1.2 The 1st Respondent amplified its attack of the Review Application on three fronts:

- a) That the purported affidavit accompanying the application was deposed to by a juristic person (i.e Kabila Property Cc as opposed to being deposed by a natural person as a representative of the legal person;
- b) That the purported affidavit does not contain a declaration by the deponent; and
- a) Was not made under oath and as such it is not commissioned by a Commissioner of Oath as required in terms of the Justices of Peace and Commissioners of Oaths Act, 1963, (Act No. 16 of 1963 as amended).

Applicant

1.3 In response to the 1st Respondent's *point in limine*, the Applicant averred that it submitted the impugned affidavit with a stamp by the Namibian Police after the receiving guidance from the Secretariat that an application needed to be accompanied by an affidavit.

1.4 There were no further submissions by the Applicant on the issue.

2. FINDINGS OF THE REVIEW PANEL

2.1 The Review Panel upheld the point *in limine* raised by the 1st Respondent to the effect that in the absence of an Affidavit accompanying the Application for Review, out of nothing comes nothing, hence there was no application for adjudication by the Review Panel. This position is consistent with the judgement in the *Paragon investment (Pty) Ltd JV China Huayun Group v Chairperson: Review Panel case*, which was upheld with approval in the case of *Elite Construction Cc v Helen Amupolo & Others*.


2.2 Further, having found as per the foregoing there was no need to dwell into the possible merits or demerits of the application, associated record as well as the parties submissions.

3. DECISIONS OF THE REVIEW PANEL

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

3.1.1 The Review Panel that the Review Application filed by the Applicant in respect of **BID NO:W/ONB/ORTC 04/2022/2023** - Maintenance of Butimen Roads in Oranjemund is dismissed in terms of Section 60(A) of the Public Procurement Act, 2015 (Act No. 15 of 2015).

3.1.2 The effective date of this Order is 16 March 2023.


FILLEMON WISE IMMANUEL
CHAIRPERSON REVIEW PANEL (i.r.o. this matter)