



**REPUBLIC OF NAMIBIA**

**MINISTRY OF FINANCE AND PUBLIC ENTERPRISES**

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**PUBLIC PROCUREMENT REVIEW PANEL**

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING**

**HELD ON 29 JUNE 2023**

**IN THE MATTER BETWEEN**

**DYNAMITE CONTRACTOR INVESTMENT (PTY) LTD FIRST APPLICANT**

**OMUVE CONSTRUCTION TECHNOLOGIES**

**SECOND APPLICANT**

**AND**

**CENTRAL PROCUREMENT BOARD OF NAMIBIA**

**FIRST RESPONDENT**

**& OTHERS**

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

**BID NO: W/OAB/CPBN– 05/2022 PROCUREMENT OF NOMINATED SME-SUBCONTRACTORS FOR THE BLADING OF GRAVEL ROADS IN THE OTJIWARONGO REGION ON BEHALF OF ROADS AUTHORITY.**

**Present:** Michael Gaweseb (Chairperson), Helen Amupolo, Brownny Mutrifa, Gilbert Habimana and Done Brinkman  
**Heard:** 29 June 2023  
**Decided:** 29 June 2023

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**ORDER**

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**1. INTRODUCTION:**

- 1.1 A hybrid meeting was held, using both physical and virtual modes.
- 1.2 Having heard Legal Representative from the Sisa Namandje legal practitioners and Mr. Herman Iipumbu on behalf of the first applicant, Mr. Mathew Shangetha on behalf of the second applicant and Ms. Nicola Davids representing the first respondent, who were joint in terms of sub-regulation 42(5)(a) of the Public Procurement Regulations (hereinafter referred to as “the Regulations”) to the Public Procurement Act, 2015 (Act No. 15 of 2015) and as amended (hereinafter referred to as “the Act”) and;

Having read the applications for review and other documents filed as part of the record, the Review Panel made the following findings and subsequent order hereunder towards the end.

**2. Verification of compliance with review proceedings:**

- 2.1 At the commencement of the review proceedings, the Chairperson asked the applicants if and when they served their respective applications on the public entity and other parties. The first applicant confirmed details of when they served, which in turn were confirmed by the first respondent. However, the latter filed their replying affidavit outside the prescribed period as per regulation 42 (4). The second applicant confirmed not having served the application on the respondents or parties. After considering the evidence as presented the review panel decided that the application by the first applicant was compliant with regulation 42 (1) to (3), and that the second application was not in compliance in terms of regulation 42 (3). The panel further found that the first respondent

despite having filed their affidavit in violation of regulation 42 (4) would be allowed to participate in the hearing. While the decision to exclude the second applicant was unanimous there was dissent on allowing the first respondent as the review panel does not have powers to condone non-compliance.

- 2.2 None of the interested parties filed a replying affidavit with the review panel in line with regulation 42 (4) and were thus excluded from deliberations.

**3. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICANTS APPLICATIONS FOR REVIEW:**

- 3.1 **The First Applicant** complained that the first respondent did not live up to the objectives of the act. They further alleged that the first respondent was not in compliance with the constitution. Additionally, that item V (that seemingly provides for a maximum of 2 contract areas across 4 regions) of the bidding document is being misinterpreted.

- 3.2 The grounds for the second application was not considered for above stated reason.

**Relief sought**

The First Applicant requests that the Review Panel set aside the decision of the first respondent and that more than one award be made to them.

**4. RESPONSE BY THE FIRST RESPONDENT**

- 4.1 The first respondent denied that they were not in compliance with the law and that item V is clear and was interpreted correctly. They further stated that they are mandated as per section 9 (1) (m).

**5. FINDINGS OF THE REVIEW PANEL**

Having heard the parties at the review panel hearing and having considered the written submissions of the parties, the review panel made the following findings:

- 5.1 That the first respondent is not in compliance with the act (section 55 (1)) and that they did not decide in accordance with item V of the bidding document.

**6. DECISIONS OF THE REVIEW PANEL:**

Based on the above findings, the Review Panel orders the following:

- 6.1 That review application from the second applicant is dismissed. The members were unanimous on this finding.

- 6.2 That the decision of the first respondent is set aside in terms of section 60 (c) of the act and that the first respondent comply with section 55 (1) of the act. One review panel member however dissented respectfully so, and would have opted for section 60 (f) as the first respondent did not provide evidence of compliance with section 43 of the act and may not be the authority to set policy in this manner, despite the well meant intention.
- 6.3 The effective date of this order is 29 June 2023.
- 6.4 That the First Respondent i.e Public Entity/ The Board shall provide proof of implementation of this Order to the Procurement Policy Unit within thirty (30) days from receipt date of this Order. A copy of the proof should be sent to the Review Panel Secretariat.

  
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**Mr. Michael Gaweseb**  
**CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)**