



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 29 JANUARY 2024**

IN THE MATTER BETWEEN

PAMO TRADING ENTERPRISES (PTY) LTD

APPLICANT

AND

**CENTRAL PROCUREMENT BOARD OF NAMIBIA (CPBN) 1st RESPONDENT
& OTHERS**

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

BID NO: G/ONB/CPBN/01/2020 – PROCUREMENT OF SUPPLY FOODSTUFFS TO GOVERNMENT SCHOOL HOSTELS

Coram: **Mekondjo Katunga (Chairperson), with Michael Gaweseb, Donè Brinkman, Gilbert Habimana and Paulina Kandali Iyambo.**

Heard: **29 January 2024**

Decided: **29 January 2024**

ORDER

1. INTRODUCTION:

- 1.1 A hybrid meeting was held, using both physical and virtual modes.
- 1.2 Having heard **Adv. Jupie Jacobs**, for the Applicant and **Ms. Nicola Davids**, for the Respondent, and other interested parties 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) (hereinafter referred to as “the Act”) and;

Having read the application 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. POINTS IN LIMINE:

- 2.1 At the commencement of the review proceedings, the Chairperson requested the Parties to raise any point in *limine* that they may have before the merits of the matter are heard. Furthermore, the Chairperson requested the Respondent to take the Review Panel through the chronological order of events so as to establish the reason for cancellation and whether the bid is still valid.

The Respondent explained to the Review Panel that it conducted the process of re-evaluation as per the Review Panel Order dated 18 March 2021, the bid validity period was accordingly extended with the bidders concern until the re-evaluation was concluded. In addition to that, the BEC commenced with re-evaluation of the bids and presented its report to the Board on 23 August 2021 after which a final decision to cancel was made by the Board on 07 October 2021. The bid validity period was extended from 19 September 2021 to 13 December 2021. Therefore, it is utmost important for the Review Panel to know that the time the bid lapsed, the bid was already cancelled. It is only after the first cancellation dated October 2021 that the Respondent could not request for consent to extend the bid validity period as the bid was already cancelled.

The Applicant submitted that this bid was referred back to the First Respondent for reconsideration with the specific instructions in terms of Section 60 (c) of the Public

Procurement Act ,2015. The First Respondent was further ordered to re-evaluate the bids strictly in accordance with the criteria and methodology set out in the instructions to bidders to the extent that they are consistent with the provisions of the law.

The Applicant further submitted that the First Respondent disregarded the Order of the Review Panel and that of the High Court of Namibia inevitable consequence of cancelling the bid was that the First Respondent would then not act upon and implement the re-evaluation of the bids, that had been done by the bid evaluation committee, in terms of the Review Panel Order. Furthermore, the Applicant stated that the Review Panel must determine whether the cancellation issued by the First Respondent is lawful or not.

3. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICANT'S APPLICATION FOR REVIEW:

- 3.1 The Applicant in its Application for review informed the Review Panel that it seeks an order for the Notice of Cancellation, issued by the First Respondent on 7 December 2023 to be reviewed and set aside and an Order directing the First Respondent to comply with the Review Panel Order dated 18 March 2021 and the High Court Order dated 14 March 2023 which ordered the First Respondent to comply with the Review Panel Order.

4. 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:

- 4.1 That the BID NO: G/ONB/CPBN-01/2020 – Procurement of supply foodsuffs to Government school hostels on behalf of the Ministry of Education, Arts and Culture is non-existent by operation of law, so does any decision that was made outside the bid validity period, in the absence of any extension.

5. DECISIONS OF THE REVIEW PANEL:

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

That, the Review Panel could not make a decision in terms of Section 60 of the Public Procurement Act, for the reason that this bid has expired.



Mekondjo Katunga
CHAIRPERSON: REVIEW PANEL (PRO THIS MATTER)

