



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264-61) 209 2319

Fax : (00 264-61) 236454

Head Office,
Moltke Street,
Private Bag 13295,
Windhoek

Enquiries: K. Kashonga

IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 11 AND 12 MARCH 2021 IN WINDHOEK, NAMIBIA

IN THE MATTERS BETWEEN:

KUNENE CATERING SERVICES (PTY) LTD	1 ST APPLICANT
UNIFOODS CATERING SERVICES (PTY) LTD	2 ND APPLICANT
UPTOWN WINDHOEK INVESTMENTS (PTY) LTD	3 RD APPLICANT
CAMELOT INVESTMENT GROUP (PTY) LTD	4 TH APPLICANT
PATRIOT GENERAL SERVICES (PTY) LTD	5 TH APPLICANT
PAMO TRADING ENTERPRISES CC	6 TH APPLICANT
PISCES INVESTMENT HOLDING NUMBER THIRTY TWO CC	7 TH APPLICANT
CIRCLE HOSPITALITY SERVICES (PTY) LTD	8 TH APPLICANT
ATLANTIC CATERING SOLUTIONS (PTY) LTD	9 TH APPLICANT
FREE NAMIBIA CATERERS CC	10 TH APPLICANT
SEAL CATERERS (PTY) LTD	11 TH APPLICANT

AND

CENTRAL PROCUREMENT BOARD OF NAMIBIA
MINISTER OF EDUCATION, ARTS AND CULTURE
JAMES AND YOUNG TRADING ENTERPRISES CC
BEVA INVESTMENTS CC
OM'KWANA CATERER CC
FUTURE FRESH SUPERMARKET CC
FUNDAMENTAL TRADING ENTERPRISES CC
STREAM TWO PROPERTIES CC
NDAKALIMWE INVESTMENTS CC
SASH TRADING AND EARTHWORKS CC
TUTHIKAMENI PAMWE INVESTMENT CC
HIBACHI INVESTMENT HOLDINGS (PTY) LTD
PDN CONSORTIUM FOOD PRODUCTION (PTY) LTD
M & H TRADING ENTERPRISES
VERO GROUP, NAPUNIKWA INVESTMENT CC JV
ROCCO FOODS INDUSTRIES CC
OMAHEKE MEGASAVE; INGONYAMA
HOLDINGS (PTY) LTD JV
CASSINGA CATERING GROUP JV AGILITY
LOGISTICS GROUP CC, OMALAETI FOODS (PTY) LTD JV
CONFAB BISTRO CC, PUPKEWITZ CATERING
SUPPLIES (PTY) LTD JV
HOMEFIN PROPERTIES CC
COUNTDOWN INVESTMENT CC
TRIOS MANGUE INVESTMENTS CC
GDN INVESTMENTS CC
INYANGUSHA TRADING ENTERPRISES CC
IBA INVESTMENTS CC; LUNGILE INVESTMENTS CC;
DITSA INVESTMENTS; HBH CONSTRUCTION AND
SERVICES; KOMMANDO TRADING ENTERPRISE CC
ACTION INVESTMENT CC
LUXURY INVESTMENTS FOUR ONE EIGHT (PTY) LTD
TLM FOOD TRADING CC, POTENZA INVESTMENT CC
WINDHOEK PALM HOTEL CC
OKG FOOD SERVICES (PTY) LTD
BELLA FOODRINKS SUPPLY CC; INDY'S CATERING
AND TRADING CC JV
CLOUD TRADING ENTERPRISES CC
CHAKULA FOODS CC
FLORIDA TRADING CC
OMPADHI INVESTMENT CC
GOLDWORKS INVESTMENT CC

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT
8TH RESPONDENT
9TH RESPONDENT
10TH RESPONDENT
11TH RESPONDENT
12TH RESPONDENT
13TH RESPONDENT
14TH RESPONDENT
15TH RESPONDENT
16TH RESPONDENT

17TH RESPONDENT

18TH RESPONDENT

19TH RESPONDENT
20TH RESPONDENT
21ST RESPONDENT
22ND RESPONDENT
23RD RESPONDENT
24TH RESPONDENT

25TH RESPONDENT
26TH RESPONDENT
27TH RESPONDENT
28TH RESPONDENT
29TH RESPONDENT
30TH RESPONDENT

31ST RESPONDENT
32ND RESPONDENT
33RD RESPONDENT
34TH RESPONDENT
35TH RESPONDENT
36TH RESPONDENT

ASHY TRADING ENTERPRISES CC, M.A.S
INVESTMENT CC JV
MONDE CARLO GUESTHOUSE CC
WUM PROPERTIES (PTY) LTD T/A PICK N PAY
NAMIBIA, FOUR CLICKS E-COMMERCE CC T/A
BUYONLINE NAMIBIA, ST FREIGHT TRANSPORT JV
FLAMINGO IN-FLIGHT CATERING (PTY) LTD
MODERIEN INVESTMENT CC
KAVITA LOGISTICS CC
EL MONDO TRADING CC
KITOKO HOLDING CC
ANNA AND JUSTIN INVESTMENT CC
ALTO'S INVESTMENT CC; ELEPHANT REST TRAVEL
AGENCY CC; SIDA-KHOES TRADING CC JV
EXCELLENT FARMING & FOOD PRODUCTION (PTY) LTD
DAKASA FOODS CC
TULAING FOOD SERVICES (PTY) LTD
JACQUIE'S CLEANING AND CATERING CC
KALANAMI ENTREPRENEURS AND MENTORSHIP
INSTITUTE CC
PASSIONS CULINARY AND HOSPITALITY INSTITUTE CC
PLATINUM INVESTMENT CC
DEGRANDE INVESTMENT CC, FLAME INVESTMENT CC JV
NAMIBIA GENERAL SUPPLIERS (PTY) LTD, WALVIS
BAY SHIP CHANDLERS (PTY) LTD JV
MUKAPA INVESTMENT CC, NDAFI TRADING AND
INVESTMENT CC JV
KAZA FOOD SERVICES (PTY) LTD
OTUZEMBA CATERING SERVICES (PTY) LTD
KONGONGALO CATERERS CC
DIE MAMAS KITCHEN CC
DAGO ISLAND INVESTMENTS (PTY) LTD
NAPANDUE INVESTMENTS CC
OASES GENERAL DEALER CC
UNDERA INVESTMENT CC, HOCKLAND FARMS JV
EVALE HOLDINGS (PTY) LTD
GONGALENI INVESTMENT CC
OMAugungu CATERERS CC, THOMAS NGHIVALWE,
EHAFO STORES CC JV
ETA INVESTMENTS CC, ETN TECHNICAL SERVICES
CC, SUNSHINE FOODS SERVICES CC, JV
DERROUTE INVESTMENTS CC
STS MEGA INVESTMENT CC

37TH RESPONDENT
38TH RESPONDENT

39TH RESPONDENT
40TH RESPONDENT
41ST RESPONDENT
42ND RESPONDENT
43RD RESPONDENT
44TH RESPONDENT
45TH RESPONDENT

46TH RESPONDENT
47TH RESPONDENT
48TH RESPONDENT
49TH RESPONDENT
50TH RESPONDENT

51ST RESPONDENT
52ND RESPONDENT
53RD RESPONDENT
54TH RESPONDENT

55TH RESPONDENT

56TH RESPONDENT
57TH RESPONDENT
58TH RESPONDENT
59TH RESPONDENT
60TH RESPONDENT
61ST RESPONDENT
62ND RESPONDENT
63RD RESPONDENT
64TH RESPONDENT
65TH RESPONDENT
66TH RESPONDENT

67TH RESPONDENT

68TH RESPONDENT
69TH RESPONDENT
70TH RESPONDENT

OPTIMUS NAMIB TRADING CC, PENDA TRADING
AND CONSULTANCY CC JV
EKWAKUTI TRADING CC
KATI KI TRADING ENTERPRISES CC
KAMBWA TRADING CC
IGLOO INVESTMENT CC
NEW SUCCESS INVESTMENTS CC
KENZI INVESTMENTS CC
HOMESTEAD ACADEMY PRODUCTION-HUB CC
SILVER SPOON TRADING CC
PENA MANUFACTURERS CC
BN MULTINATIONAL INVESTMENT CC
MAGNETIZE INVESTMENT CC
PENDA ENTERPRISES CC
TAFINA TRADING CC
NANGUEI TRADING CC, OPUWO VATUE VAHIMBA
INVESTMENT CC, TJATU TRADING CC JV
EYAMBEKO NAMIBIA CATERING SERVICES (PTY) LTD
REVENUE INVESTMENT CC

71ST RESPONDENT
72ND RESPONDENT
73RD RESPONDENT
74TH RESPONDENT
75TH RESPONDENT
76TH RESPONDENT
77TH RESPONDENT
78TH RESPONDENT
79TH RESPONDENT
80TH RESPONDENT
81ST RESPONDENT
82ND RESPONDENT
83RD RESPONDENT
84TH RESPONDENT

85TH RESPONDENT
86TH RESPONDENT
87TH RESPONDENT

**REVIEW APPLICATIONS MADE IN TERMS OF SECTION 59 OF THE PUBLIC
PROCUREMENT ACT, NO. 15 OF 2015**

**BID NUMBER G/ONB/CPBN-1/2020: PROCUREMENT OF SUPPLY FOODSTUFFS TO
GOVERNMENT SCHOOL HOSTELS**

PRESENT: Brownny Mutrifa (Chairperson) with Kenandei Tjivikua, Mekondjo
Nghipandulwa, Tulimeyo Kaapanda and Doné Brinkman concurring

Heard on: 11 and 12 March 2021

Decided on: 18 March 2021

REVIEW PANEL ORDER

Having heard Mr. Trevor Brockerhoff for the 1st, 2nd and 3rd Applicants, Mr. Gilroy Kasper for the 4th Applicant, Advocate Raymond Heathcote SC for the 5th, 6th, 7th, and 8th Applicants, Ms. Karin Klazen for the 9th Applicant, Ms. K. Angula for the 10th Applicant and Advocate Ramon Maasdorp for the 11th Applicant;

Having further heard Mr. Festus Hamukwaya for the 1st Respondent, Mr. Kadhila Amoomo for the 3rd Respondent, Mr. Mbushandje Ntinda for the 4th and 5th Respondents, Ms. Kula Simpson for the 6th and 7th Respondents, Ms. Jamellee Janke for the 8th Respondent, Mr. Matti Mwandingi for the 9th Respondent;

Having further heard other interested parties who were joined to the proceedings in terms of Regulation 42 (5) of the Regulations (hereinafter referred to as the "Regulations") to the Public Procurement Act, No. 15 of 2015 (hereinafter referred to as the "Public Procurement Act"); and

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

1. BACKGROUND

- 1.1. The applications for review which served before the Review Panel on 11 and 12 March 2021, relate to Bid Number G/ONB/CPBN-1/2020 for the Procurement of Supply of Foodstuffs to Government School Hostels. The procurement exercise conducted was done in terms of the Public Procurement Act 15 of 2015 and its Regulations. The procurement exercise was conducted by the Central Procurement Board of Namibia (hereinafter referred to as "the Board" or "CPBN") on behalf of the Ministry of Education, Arts and Culture. The estimated cost of the bid was N\$ 3,571,443, 396.50.

- 1.2. The procurement method used by the Board was the Open National Bidding and the bid was advertised on 12 June 2020. After an extension of the closing date, the closing date of submission of bids was 9 September 2020. The number of bids received by the Board was ninety-six. The bids were separated into lots and per Region.
- 1.3. The bid was evaluated in three phases. Phase 1 consisted of a Compulsory Disclosure-Eligibility Evaluation, Phase 2 was a Financial Evaluation, Phase 3 was divided into two sub phases namely Phase 3.1, a Technical Evaluation and Phase 3.2 was a Site Inspection.
- 1.4. Following the evaluation process by the Bid Evaluation Committee, the Board selected to award in terms of Section 9 (1) (k) and 9 (1) (l) of the Public Procurement Act to the following bidders:
 - 1.4.1. James and Young Trading Enterprises CC (Omaheke Region);
 - 1.4.2. Beva Investments CC (Otjozondjupa Region);
 - 1.4.3. Sash Trading and Earthworks CC (Oshana and Oshikoto Regions);
 - 1.4.4. Ndakalimwe Investments CC (Ohangwena Region);
 - 1.4.5. Tuthikameni Pamwe Investments CC (Erongo and Kunene Regions);
 - 1.4.6. Future Fresh Super Market CC (Komas Region);
 - 1.4.7. Om'kwana Caterer CC (Omusati Region);
 - 1.4.8. Stream Two Properties CC (Zambezi and Kavango East and West); and
 - 1.4.9. Fundamental Trading Enterprises CC (Hardap and Karas Regions).
- 1.5. The Board via a Notice of Selection to Award in terms of Section 55 of the Act, informed the bidders of its decision to award on or about 22 February 2021. The Board further informed all bidders to this bid that the standstill period would be from 24 February 2021 until 02 March 2021.
- 1.6. The Review Panel Secretariat received 11 Applications for Review regarding this bid. The Applicants and Respondents are listed above not in the order they were referred to in the Review Panel Hearing (hereinafter referred to as the "Hearing") but in the order in which representations was made at the Hearing on 11 and 12 March 2021 by the respective Applicants or Respondents.
- 1.7. The Review Panel when receiving Applications for Review in terms of Section 59 of the Act and Replying Affidavits in terms of Regulation 42 (4), may in terms of Regulation 44, conduct the review panel proceedings in such a manner which the Review Panel considers most suitable to resolve the issues before it. In addition, where separate review applications have been instituted the Review Panel may in terms of Regulation 42 (5) (b), consolidate the review applications as one action. The Review Panel therefore decided that as all 11

Applications for Review related to one bid and because the Respondents and interested parties would all be the same, to have one Hearing for all 11 Applications for Review.

- 1.8. The Review Panel in addition, in terms of Section 42 (5) (a) joined all interested parties to the Review Panel proceedings. At the Hearing, the Review Panel allowed all Applicants and Respondents to briefly present their grounds for review (to the Review Panel).

2. APPLICANTS' GROUNDS FOR REVIEW

- 2.1. Regulation 42 (2) states:

"(2) An application for review contemplated in subregulation (1) must-

(a) contain the grounds for review as well as any supporting documents on which the supplier of bidder rely on; and

(b) be accompanied by an application fee of N\$ 5000."

- 2.2. The Review Panel has satisfied itself that all Applicants who participated in the Hearing on 11 and 12 March 2021 paid the required application fee of five thousand Namibian Dollars.
- 2.3. The Review Panel summarized the grounds of review by each Applicant in the order which they presented at the Hearing from paragraph 2.4.1 to paragraph 2.9.8 herein below.
- 2.4. **1st Applicant - Kunene Catering Services (Pty) Ltd;**
2nd Applicant - Unifoods Catering Services (Pty) Ltd; and
3rd Applicant - Uptown Windhoek Investments (Pty) Ltd:
- 2.4.1. The 1st Applicant informed the Review Panel that it submitted a bid for Kunene, Erongo, Khomas, Hardap, Otjozondjupa, Omaheke, Omusati, Zambezi and Ohangwena Regions. The Executive Summary of the Bid Evaluation Report shows that the 1st Applicant was disqualified in Phase 1 of the Bid Evaluation for two reasons. Firstly, as it failed to comply with ITB 12.1 (h) (4) in the Bidding Data Sheet of the bidding document on page 28, which provides that for services provisions in regions North of the Veterinary Cordon Fence/Northern Communal Areas, bidders are required to furnish letters of intent for the supply or sourcing of fresh produce, meat and other products from local producers or suppliers north of the cordon fence. For this purpose, all bidders should obtain supply agreements or letter of intent with registered fresh produce or Meat Board Registered Abattoirs (in case of meat) in those regions. Secondly the 1st Applicant was disqualified because it submitted a Social Security Commission's Good Standing Certificate dated 30 June 2020 that was not valid as required in ITB 12.1 (h) (4).

- 2.4.3. The 1st Applicant argued that the reasons advanced by the Board were materially incorrect and unreasonable. The 1st Applicant argued that it did submit the required Letters of Intent for the supply or sourcing of fresh produce, meat and other products from local producers situated north of the Veterinary Cordon Fence and the Board therefore incorrectly found that the first Applicant did not submit Letters of Intent from suppliers in the Northern Regions of Namibia. In addition, the 1st Applicant contended that the said letters were only a requirement for the bids in the Northern Regions and should not have been a disqualifying reason for bids submitted in other regions south of Veterinary Cordon Fence.
- 2.4.4. At the Hearing, Mr. Brockerhoff, on behalf of the 1st and 2nd Applicants, argued that the envisaged letter of intent should only apply to bidders seeking to supply north of the Veterinary Cordon Fence and not to other parts of Namibia as in terms of Section 18 of the Animal Health Act, Act No. 1 of 2011 and that the Regulations made in terms of the said Act provide for the prohibition on the export of fresh produce/meat from the quarantine areas north of the Veterinary Cordon Fence to other parts of Namibia.
- 2.4.5. Mr. Brockerhoff further argued that at the time that the bid was due to close the 1st Applicant's Social Security Commission's Good Standing Certificate was valid and that the COVID-19 situation cannot be used to disqualify the 1st Applicant's bid. The Social Security Office in Otjiwarongo where his client is based was closed due to the prevailing COVID-19 epidemic at the time. He observed that if one party uses an extension as a result of COVID-19 pandemic than other party should be able to do so too.
- 2.4.6. For the reasons listed above, the 1st Applicant contended that the decision to disqualify it from the bidding process was unjustified, incorrect and procedurally unfair.
- 2.4.7. The 2nd Respondent in the Executive Summary of the Bid Evaluation Report was disqualified in Phase 1 for three reasons. Firstly, the 100% Namibian ownership and 51% ownership by previously disadvantaged Namibians could not be confirmed because it did not submit the required supporting documents to determine the ultimate beneficial owners of Corridor Logistics (Pty) Ltd as per ITB 36.3 (d).
Secondly, the 2nd Applicant submitted a Social Security Commission's Good Standing Certificate that was not certified as required in ITB 12.1 (h) (4) in the Instruction to Bidders of the Bidding document on page 11.
Thirdly, the 2nd Applicant did not furnish letters of intent for the supply or sourcing of fresh produce, meat and other products from local producers or suppliers north of the cordon fence. For this purpose, the 2nd Applicant should have obtained supply agreements or letters of intent with registered fresh produce or Meat Board Registered Abattoirs (in the case of meat) in those regions as required in ITB 12.1 (h) (4) in the Bidding Data Sheet of the bidding document on page 28.
- 2.4.8. The 2nd Applicant in its Application for Review stated that the required information on the ownership structure of Corridor Logistics was submitted as part of its bid and Corridor Logistics as a minority shareholder of Unifoods is a Namibian Entity. There was no

requirement that all participants must be natural persons nor that their shareholders must be natural persons.

- 2.4.9. The 2nd Applicant further argued that it did comply with the 51% for previously disadvantaged Namibian shareholding and Namibian shareholding requirement in the bidding document.
- 2.4.10. Mr. Brockerhoff informed the Review Panel that the 2nd Applicant submitted an original Social Security Commission's Good Standing Certificate and thus it was not necessary to certify the said certificate.
- 2.4.11. Finally, the 2nd Applicant argued that the entities selected for the award lack the technical and historic background to implement the bid successfully. Several of the awarded bidders have no prior experience in the catering business as their experience relates to mainly construction or property related entities.
- 2.4.12. The 3rd Applicant was disqualified by the Board at Phase 3.1 because it scored 52 points at the post qualification Technical Evaluation and did not meet the minimum score of 70 points as required.
- 2.4.13. According to the Review Application filed by the 3rd Respondent, the standard bidding document in Section III stated that the bids will be assessed based on the following criteria and weighted as follows:
- "Phase one-0%*
Phase two-35%
Phase three (3.1)- 25%
Phase three (3.2)- 40%
Total Score weights-100%"
- 2.4.14. The 3rd Respondent argued that ITB 36 read in conjunction with the Bidding Data Sheet is silent on the scoring criteria and what the minimum applicable scoring would be to qualify as a supplier. The Bid Evaluation Committee was therefore not in compliance with Section 43 (c) and Regulation 33 (q) due to the vagueness and unclear criteria on the methodology and process to be followed in the assessment of the bid.
- 2.4.15. Finally, the 3rd Applicant argued that the Board violated ITB 3.1 (e), in that the Board awarded the bid to Tuthikamni Pamwe Investment CC and Fundamental Trading Enterprises CC, who each did not have a warehouse whilst it was mandatory in terms of the ITB to have a warehouse.
- 2.4.16. Mr. Brockerhoff on behalf of all three of his clients requested that the Review Panel to cancel the bid, have the bid re-advertised and to monitor the evaluation process.

2.5. 4th Applicant - Camelot Investment Group (Pty) Ltd

- 2.5.1. The 4th Applicant informed the Review Panel that it was disqualified in Phase 1 of the Evaluation process due to the fact that it submitted a Social Security Commission's Good Standing Certificate which was dated 6 July 2020, that is not valid as required in ITB 12.1 (h) (4) in the Instruction to Bidders of the bidding document on page 11.
- 2.5.2. The 4th Applicant's grounds for review was that the Board failed to evaluate the bids received in terms of the Public Procurement Act and thus the 4th Applicant has been treated unfairly, unreasonably and has been subjected to an arbitrary decision-making process.
- 2.5.3. Mr. Kasper at the Hearing argued that the Social Security Commission's Good Standing Certificate does not have a validity period inserted on the said certificate. As no indication is given on the validity period of the certificate, the Board cannot assume what the validity period is. In its affidavit, the 4th Respondent argued that the extension of the bid validity period in addition played a role in the date when the Social Security Commission's Good Standing Certificates were obtained by it. The Board therefore misdirected itself on what constitutes a valid Social Security Commission's Good Standing Certificate.
- 2.5.4. The 4th Applicant, in their affidavit, informed the Review Panel that the Board directed an inquiry to the Social Security Commission on 24 September 2020 to ascertain the validity period for a Social Security Commission's Good Standing Certificates without any notice to the bidders. It argued that this action was arbitrary and denied the affected bidders a right to be heard.
- 2.5.5. In conclusion, the 4th Respondent requested the Review Panel to set aside the bid and refer the matter back to the Bid Evaluation Committee for further or fresh evaluation of the bids in accordance with the provisions of Section 52 (9) (10) and (14) of the Procurement Act.

**2.6. 5th Applicant - Patriot General Services (Pty) Ltd;
6th Applicant - Pamo Trading Enterprises CC;
7th Applicant - Pisces Investment Holdings Number Thirty Two CC; and
8th Applicant - Circle Hospitality Services (Pty) Ltd**

- 2.6.1. The 5th to 8th Applicants, in their affidavits, informed the Review Panel that the Notice of Selection to Award issued by the Board in terms of the Public Procurement Act to the bidders is a nullity. They contended that the Notice issued by the Board in pursuance to Section 55 (4) of the Public Procurement Act is incorrect and mislead the bidders on the course of action to take to seek recourse in terms of the Public Procurement Act. A review referred to in Section 55 (5) of the Public Procurement Act is a review to the Review Panel as envisaged in terms of Section 59 of the Public Procurement Act and not to the Board for reconsideration.

- 2.6.2. At the Hearing, Advocate Heathcote SC, on behalf of the 5th to the 8th Applicants, argued that only one review process is envisaged in the Public Procurement Act, being a review application in terms of Section 59 of the Public Procurement Act. This is supported by the *functus officio* doctrine which in short means that a person who is vested with adjudicative or decision making power may, as a general rule, exercise those powers only once in relation to the same matter. When the Board has made its decision known it could not reconsider its own decision. A decision made and communicated by the Board cannot be reconsidered unless authority for such can be found in the relevant legislation. Advocate Heathcote SC argued that there is no reconsideration provided for in the Public Procurement Act.
- 2.6.3. It was further argued that Regulations are made in amplification to the Act. Regulations 38 (2) (c) and Regulation 38 (2) (d) refers to a review made to the Review Panel. The review is done by the Review Panel and not the Public Entity itself. Regulation 38 (3) will take effect if a review is done by the Review Panel and the Public Entity is ordered to re-evaluate the bid.
- 2.6.4. The 5th to 8th Applicants argued that a review made in terms of Section 59 of the Public Procurement Act must be made within the standstill period, which is normally seven days after the Notice to Award in terms of Section 55 (4) of the Public Procurement Act is issued by the Board.
- 2.6.5. The 5th Applicant was disqualified at Phase 3.1 of the bid evaluation because the 5th Applicant scored 46 points at the Post Qualification Technical Evaluation and did not meet the minimum score of 70 points according to the Executive Summary of the Bid Evaluation Report issued by the CPBN.
- 2.6.6. The 5th Applicant debated that the bidding document did not provide that a minimum score of 70 points must be obtained to qualify in terms of Phase 3.1. Thus, the evaluation done by the Board is thus not in compliance with Section 59 (2) of the Public Procurement Act as the methodology and criteria used to evaluate the bids was not as per the instructions to bidders contained in the bidding document.
- 2.6.7. The 5th Applicant further contended that the reasons provided by the Board in the Executive Summary of the of the Bid Evaluation Report are insufficient and do not state how many points were deducted in respect of each non-compliance. It informed the Review Panel that they have addressed a letter to the Board requesting reasons on where and how the points were deducted, however, such reasons have not been provided to it by the Board.
- 2.6.8. The 5th Applicant reasoned that it exceeded the technical requirements of the bid and thus the decision to disqualify them is wrong and must be set aside. It argued that Section 3.1 (e) on page 35 of the bidding document provides that the Supplier shall provide documentary evidence of storage facilities as per Standards for Storage of Foodstuffs at Warehouse(s) of the Supplier. Tuthikameni Pamwe Investments CC was awarded a lot in

this bid without producing the required documentary proof of a storage facility whilst the 5th Applicant who provided such evidence was qualified.

- 2.6.9. The 6th Applicant was disqualified by the Board at Phase 3.1 of the evaluation process. The reasons provided by the Board as to why the 6th Applicant was disqualified was because the 6th Applicant scored 52 points at the Post Qualification Technical Evaluation and did not meet the minimum score of 70 points. Similar, to the 5th Applicant, the 6th Applicant in its affidavit argued that the bidding document did not provide that a minimum score of 70 points must be obtained to qualify in terms of Phase 3.1. The evaluation done by the Board is thus not in compliance with Section 59 (2) of the Public Procurement Act as the methodology and criteria used to evaluate the bids was not as per the instructions to bidders contained in the bidding document.
- 2.6.10. The 6th Applicant, in its affidavit contended that the reasons provided by the Board are insufficient and do not provide how much points were deducted for each non-compliance. It addressed a letter to Board requesting for detailed reasons as to where and how points were deducted. The 6th Applicant, like the 5th Applicant, informed the Review Panel that it exceeded the technical requirements and therefore the Board's decision to disqualify it is wrong and must be set aside.
- 2.6.11. The 6th Applicant, in its affidavit, stated that Section 3.1 (e) on page 35 of the bidding document provides that the Supplier shall provide documentary evidence of storage facilities as per Standards for Storage of Foodstuffs at Warehouse(s) of the Supplier. Fundamental Trading Enterprise CC was a successful bidder despite not providing the required documentary evidence of a storage facility. The 6th Applicant who did provide documentary evidence of a storage facility was disqualified for allegedly scoring below the hidden threshold of 70 points.
- 2.6.12. The final matter addressed by the 6th Applicant in its affidavit is that it provided the lowest financially and technical responsive bid for Lot A and Lot 1. It argued that its bid would be N\$ 9.95 cheaper in respect of Lot A and N\$ 9.95 in respect to Lot I than the successful bidders.
- 2.6.13. The 7th Applicant, was disqualified by the Board at Phase 1 of the evaluation process because it did not submit a functional organisational structure for managing the contract as required in ITB 12.1 (h) (6) in the Bidding Data Sheet of the bidding document on page 28. Also, it did not submit a declaration that the bidders' shareholders have no interest in other bidders' firms as required in the Bidding Data Sheet of the bidding document on page 28.
- 2.6.14. The 7th Applicant informed the Review Panel that it did comply with ITB 12.1 (h) (6) and ITB 12.1 (h) (7) in the Bidding Data Sheet on page 28 of the bidding document. It argued that it was unfairly and wrongly disqualified when it did provide the required documentation.

- 2.7.3. The 9th Applicant argued that it did submit company registration and shareholding certificates and a Declaration confirming that no conflict of interest exists with other bidders. It stated that the declaration of no conflict of interest was signed by Mr. Cedrick Matengu as director, shareholder and on behalf of the remaining directors and shareholders.
- 2.7.4. The 9th Applicant further argued that if the 1st Respondent was unclear about the shareholding of the 9th Applicant it could have sought clarity in terms of Section 52 (1) of the Act. It therefore requested the Review Panel to find that the Board has not acted in compliance with the Act and directs the CPBN to consider the 9th Applicant's bid.
- 2.8. **10th Applicant - Free Namibia Caterers CC:**
- 2.8.1. According to the Executive Summary of the Bid Evaluation Report, the 10th Applicant was disqualified in Phase 1 of the evaluation process because the 10th Applicant did not submit a functional organisational structure for managing the contract as required in ITB 12.1 (h) (6) in the Bidding Data Sheet of the bidding document on page 28.
- 2.8.2. The 10th Applicant in its affidavit provided that the functional organizational structure for managing the contract was submitted in its tender proposal under Annexure IJ. It argued that it was unfairly disqualified when it submitted all the required documents.
- 2.8.3. At the Hearing, the 10th Applicant argued that it was not specified in the ITB what function in the original structure the requested dietician will fall in and only stated that a dietician must be engaged. However, it had made provision for additional employees in its organogram as it may be required in the management of the contract.
- 2.8.4. Given the numerous discrepancies in the evaluation of the bid, the 10th Applicant requested that the Review Panel sets aside the bid and gives guidance to the Board on how the bid should be evaluated.
- 2.9. **11th Applicant - Seal Caterers (Proprietary) Limited**
- 2.9.1. The Review Panel was informed that the 11th Applicant was disqualified in Phase 1 of the evaluation process because they submitted a Social Security Commission's Good Standing Certificate dated 17 June 2020 that was not valid in ITB 12.1 (h) (4) in the Instruction to Bidders of the bidding document on page 11. It contended that it filed an original Social Security Commission's Good Standing Certificate dated 9 July 2020. In the reasons provided by the Board in its Execution Summary of the Bid Evaluation Report, it stated that 11th Applicant provided a Social Security Commission's Good Standing Certificate dated 17 June 2020. The 11th Applicant therefore argued that the Bid Evaluation Committee considered a different document compared to the document submitted by it.
- 2.9.2. The 11th Applicant argued that the Social Security Commission's Good Standing Certificate issued by them is valid as it is an original document and they have since inception been in good standing with the Social Security Commission. In its affidavit it stated that the Board gave no reasons for its finding that the Social Security Commission's

Good Standing Certificate submitted by it was not valid. It stated further stated that it can only assume that the Board might be under the misconception that the Social Security Commission's Good Standing Certificates have a limited period of validity.

- 2.9.3. The 11th Applicant, in their affidavit, explained that the concept of a Social Security Commission's Good Standing Certificate does not exist in the Namibian law. The concept further does not exist in the Public Procurement Act nor in the Social Security Act, Act 34 of 1994. There is therefore no legislation that determines the validity period of such certificates, which have been devised by officials for the purposes they are currently used for. The Social Security Commission nor the Board can therefore attach a validity period to these Social Security Commission's Good Standing Certificates.
- 2.9.4. The 11th Applicant argued that the Board would not be deterred from determining that it would require a certificate which is not older than a certain period as a requirement when inviting bids for a procurement activity. This requirement was however not set in this particular bid and can therefore not rely on a condition that was not a requirement in the bid.
- 2.9.5. The 11th Applicant, in its affidavit and at the Hearing, contended that the Board was also not aware what the validity period of the Social Security Commission's Good Standing Certificate was and therefore the Board, through a letter dated 10 August 2020, requested clarification on what the validity period of the Social Security Commission's Good Standing Social Certificate is. This clarification sought by the Board from the Social Security Commission was not made known to the bidders. The 11th Applicant contended that the Social Security Commission or its officials in terms of administrative law do not have the power to devise rules without being specifically authorized by the empowering legislation to do so.
- 2.9.6. The 11th Applicant argued that if the Applicant was awarded the bid than the Fiscus would have saved anything between N\$ 8.3 million to N\$ 14 million per annum per Lot. It further argued that obtaining a suitable warehouse was a material issue in the bid and two bidders were awarded the bid without having secured a suitable warehouse. It argued that if the Board could overlook the absence of a suitable warehouse it could have overlooked other material deviations such as the expiry date of a Social Security Commission's Good Standing Certificate.
- 2.9.7. The 11th Applicant in its affidavit argued that it is uncanny that a single accounting officer known as Mr. Johannes Neputa could be acting in that position for four of the nine successful tenderers and be a successful bidder as sole member of Om'kwana Caterer CC and thus supports the inference that something is amiss. Further Mr. Neputa's multiple roles is in conflict with paragraph 5.2 of the instructions to bidders on page 7 of the bidding document which stated that a bidder shall not have a conflict of interest. The 11th Applicant

argued that the 4 of the successful bidders fall foul of paragraph 5.2 (c) of the Instructions to Bidders (ITB) on page 7 of the bidding document.

2.9.8. At the Hearing, Adv. Maasdorp, on behalf of the 11th Applicant, informed the Review Panel that he abandoned his argument regarding the SAIBA allegation, as there is no sufficient evidence to support the allegation. The Review Panel will therefore not address the allegation made in the affidavit of the 11th Applicant regarding the SAIBA allegation.

3. RESPONDENTS RESPONSE TO THE APPLICATIONS FOR REVIEW

3.1. The Review Panel summarized the Respondents' response to the applications for review in the order in which they were presented at the Hearing herein below.

3.2. 1st Respondent - Central Procurement Board of Namibia

3.2.1. Mr. Hamukwaya, on behalf of the 1st Respondent, informed the Review Panel that it filed replying affidavits to 9 out of the 11 applications for review in terms of Regulation 42 (4). The 1st Respondent did not reply to the applications for review by Camelot Investment Group (Pty) Ltd and Atlantic Catering Solutions (Pty) as it was of the opinion that such applications for review were filed outside of the time period prescribed in terms of Regulation 42 (1).

3.2.2. The 1st Respondent in its replying affidavit denied that the notice it sent out to bidders in terms of Section 55 is a nullity and submitted that such notice was issued pursuant to Sections 55 of the Public Procurement Act. It denied that the said notice was misleading and was meant to inform the bidders that they may submit grounds for reconsideration to the CPBN during the standstill period in terms of Regulation 38.

3.2.3. The 1st Respondent argued that the criteria and methodology used to examine and evaluate bids were neither vague nor insufficient. It submitted that Bidders had the opportunity to seek clarification in terms of ITB 8.1 if they had questions regarding the evaluation, the qualification criteria and the method of scoring. The criteria weighting for each phase of the evaluation was set out on page 37 of the bidding document which provided bidders with sufficient information and guidance to determine the methodology used by the 1st Respondent in evaluating the bids.

3.2.4. The 1st Respondent informed the Review Panel that they did not respond to letters from bidders seeking reconsideration or reasons why they were not awarded the bid because they were waiting for the 7- days standstill period to elapse to individually respond to each unsuccessful bidder.

3.2.5. The 1st Respondent in their affidavits informed the Review Panel that bids were selected for award based on their overall performance in the whole evaluation process and not only

on their prices. The phases were score-based evaluation phases and that all bids were evaluated on their man-day price versus the benchmark price.

- 3.2.6. The 1st Respondent argued that the 5th Applicant did not submit the required functional organisational structure for the managing of the contract. The 5th Applicant in its bidding document did not indicate that it commits to employ or engage at material times of the contract the services of a dietician. The 1st Respondent stated that Phase 1 of the evaluation of this bid was a compulsory disclosure and that the failure of a bidder to submit the required documents resulted in automatic disqualification.
- 3.2.7. The 1st Respondent further argued that in terms of Section 52 (5) of the Public Procurement Act, it is lawful to correct arithmetical errors. Representatives of the Bid Evaluation Committee explained that when they recalculated the total menu prices of certain bids as some totals were calculated incorrectly and inserted by bidders. The Bid Evaluation Committee corrected the total prices as provided for in Section 52 (5) of the Public Procurement Act. The bidders were duly informed by the CPBN of the corrections effected by the Bid Evaluation Committee.
- 3.2.8. At the Hearing, the Bid Evaluation Committee informed the Review Panel that they assumed that a Social Security Commission's Good Standing Certificate is valid for 30 days because employers have to make their contributions every month. The Bid Evaluation Committee did not have a letter from the Social Security Commission informing them what the validity period of the Social Security Commission's Good Standing Certificate is and relied on their own interpretation.
- 3.2.9. Mr. Hamukwaya further argued that pages 7 and 43 of the bidding document had to be completed by bidders regarding the declaring of interests. He argued that the shareholders of a bidder cannot sign both these documents.
- 3.2.10. The representatives of the Bid Evaluation Committee explained at the Hearing that not having a warehouse was a criterion resulting in an automatic disqualification. A bidder who did not have a warehouse scored 0 but it did not mean that the bidder had to be automatically disqualified. Only Phase 1 resulted in automatic disqualification.
- 3.2.11 Based on the above, the 1st Respondent requested the Review Panel to dismiss the applications for review.

3.3. 3rd Respondent – James and Young Trading Enterprises CC

- 3.3.1. Mr. Amoomo, on behalf of the 3rd Respondent, informed the Review Panel that the applications for review were not served timeously as per Regulation 42 and that the method of service elected by the Applicants was not done as per the Regulation.

on their prices. The phases were score-based evaluation phases and that all bids were evaluated on their man-day price versus the benchmark price.

- 3.2.6. The 1st Respondent argued that the 5th Applicant did not submit the required functional organisational structure for the managing of the contract. The 5th Applicant in its bidding document did not indicate that it commits to employ or engage at material times of the contract the services of a dietician. The 1st Respondent stated that Phase 1 of the evaluation of this bid was a compulsory disclosure and that the failure of a bidder to submit the required documents resulted in automatic disqualification.
- 3.2.7. The 1st Respondent further argued that in terms of Section 52 (5) of the Public Procurement Act, it is lawful to correct arithmetical errors. Representatives of the Bid Evaluation Committee explained that when they recalculated the total menu prices of certain bids as some totals were calculated incorrectly and inserted by bidders. The Bid Evaluation Committee corrected the total prices as provided for in Section 52 (5) of the Public Procurement Act. The bidders were duly informed by the CPBN of the corrections effected by the Bid Evaluation Committee.
- 3.2.8. At the Hearing, the Bid Evaluation Committee informed the Review Panel that they assumed that a Social Security Commission's Good Standing Certificate is valid for 30 days because employers have to make their contributions every month. The Bid Evaluation Committee did not have a letter from the Social Security Commission informing them what the validity period of the Social Security Commission's Good Standing Certificate is and relied on their own interpretation.
- 3.2.9. Mr. Hamukwaya further argued that pages 7 and 43 of the bidding document had to be completed by bidders regarding the declaring of interests. He argued that the shareholders of a bidder cannot sign both these documents.
- 3.2.10. The representatives of the Bid Evaluation Committee explained at the Hearing that not having a warehouse was a criterion resulting in an automatic disqualification. A bidder who did not have a warehouse scored 0 but it did not mean that the bidder had to be automatically disqualified. Only Phase 1 resulted in automatic disqualification.
- 3.2.11 Based on the above, the 1st Respondent requested the Review Panel to dismiss the applications for review.

3.3. 3rd Respondent – James and Young Trading Enterprises CC

- 3.3.1. Mr. Amomo, on behalf of the 3rd Respondent, informed the Review Panel that the applications for review were not served timeously as per Regulation 42 and that the method of service elected by the Applicants was not done as per the Regulation.

- 3.3.2. Mr. Amoomo further argued that the Applicants, in terms of Regulation 38, should first have sought for a reconsideration before lodging applications for review with the Review Panel. The 3rd Respondent therefore argued that Applicants failed to exhaust internal remedies before lodging the matter with the Review Panel and therefore the Review Panel should dismiss the applications for review.
- 3.3.3. The 3rd Respondent in its affidavit denied that Mr. Neputa was its accounting officer at the time of submitting its bid in this matter and that the said Mr. Neputa played no role in the preparation and submission of the bid. It informed the Review Panel that Mr. Neputa was merely used for the purpose of registration of the company more than 8 years ago.
- 3.3.4. The 3rd Respondent in its affidavit further informed the Review Panel that the fact that it does not have catering as its exclusive principle business does not in any way disqualify the 3rd Respondent from this bid. It argued that exclusivity of catering as a business activity was not a requirement of the bid.
- 3.3.5. Mr. Amoomo, argued that the Applicants cannot object to the criteria set out in the bidding document at this stage and ought to have sought for clarification from the CPBN regarding the criteria set out in the bidding document during the clarification stage of this bid. He contended that bidders were well aware of the methodology to be used to evaluate this bid as set out in page 37 of the bidding document. The 3rd Respondent argued that the bidders had no objection to the bidding document and can thus not complain post facto.
- 3.3.6. Mr. Amoomo further explained that they interpret Section 29 of the Public Procurement Act not to be phrased in peremptory terms and thus granted the CPBN latitude in granting its instructions to bidders. He further contended that the CPBN was in the best position to attach weight to the criteria set out the bidding document.
- 3.3.7. Mr. Amoomo finally argued that the Review Panel when deciding must consider the prejudice that would be suffered by the Namibian child if this bid is delayed and the amount of state resources that has been used to evaluate this bid. In addition, no bidder has been able to prove corruption in the evaluation process conducted by the CPBN.
- 3.3.8. In light of the above, the 3rd Respondent requested that the applications for review be dismissed.

3.4. 4th Respondent – Beva Investments CC

5th Respondent – Om'kwana Caterer CC

- 3.4.1. Mr. Ntinda, on behalf of the 4th and 5th Respondents, argued that there is no substance in the grounds of review set out in the applications for review. He further argued that the Public Procurement Act does not provide for a reconsideration by a public entity or the CPBN. Therefore, an application for review must be done within the standstill period. Applications for review lodged 7 days after the decision was made by the CPBN were lodged out of time in terms of Regulation 42 (1).

- 3.4.2. In its affidavit, the 4th Respondent argued that once a bid passes the first phase of the evaluation process, the 1st Respondent was entitled in terms of the bidding documents to make certain decisions even if such decisions may deviate from certain discretionary requirements.
- 3.4.3. The 4th Respondent argued that the Southern African Institute for Business Accountants (SAIBA) and its standing with bidders is not a qualification criterion in relation to this bid.
- 3.4.4. At the Hearing, Mr. Ntinda requested the Review Panel to ask if the Bid Evaluation Committee was reasonable in making its decision. He argued that during the bidding process there was a clarification sought by a bidder on the mandatory documents and the CPBN responded to the clarification by stating that the mandatory documents must be valid when the bid close. Thus, all bidders had to ensure that all their mandatory documents were valid when the bid closed.
- 3.4.5. Mr. Ntinda further argued that the Review Panel had no power to say that the Social Security Commission was wrong in its interpretation of what a valid Social Security Commission's Good Standing Certificate is. The CPBN cannot determine the validity of a valid Social Security Commission's Good Standing Certificate and therefore they correctly enquired from the institution who issues the certificate what the validity of the certificate is. He argued that if the Applicants disagree with the interpretation of the Social Security Commission, such Applicants must first attack the decision of the Social Security Commission before attacking the CPBN on its decision to implement what the Social Security Commission informed it is a valid Social Security Commission's Good Standing Certificate.
- 3.4.6. The 5th Respondent, in its replying affidavit, argued that under clause 33 of the bidding documents it was clear that all mandatory documents had to be provided and if not, the bid would be automatically disqualified. It further argued that it was common cause that a valid original or certified copy of Social Security Commission's Good Standing Certificate is one of such mandatory documents. If this document was not provided than the result would be automatic disqualification.
- 3.4.7. Mr. Ntinda contended that Section 52 (5) of the Public Procurement Act permit the CPBN to correct arithmetical errors where it is appropriate to do so. It is therefore lawful for the CPBN to correct arithmetical errors. He argued that the 5th Respondent's prices were not adjusted unlawfully but corrected as provided for in the Public Procurement Act.
- 3.4.8. Mr. Ntinda argued that the 11th Applicant did not understand the role an accounting officer plays in an entity. He submitted that the accounting officer does not run the entity but is used when registering the entity. The 5th Respondent in its replying affidavit informed the Review Panel that the said accounting officer had nothing to do with any information of the other Respondents as far as the bids are concerned and have never dealt with clients' procurement bids.

3.4.9. The 4th and 5th Respondents further argued that there was no direct loss to the fiscus simply because the successful bidders were awarded the bid. In addition, the argument in respect of price differences was irrelevant to those bids who were excluded on the basis of not submitting mandatory documents.

3.4.10. The 4th and 5th Respondents therefore concluded that there is no information before the Review Panel that necessitates the setting aside of the decision by the CPBN. Mr. Ntinda informed the Review Panel that there was no glaring misdirection by the CPBN and therefore the Review Panel has no basis to set aside the decision by the CPBN. The 4th and 5th Respondents therefore requested that the applications for review be dismissed.

3. 5. 6th Respondent - Future Fresh Super Market CC

7th Respondent - Fundamental Trading Enterprises CC

- 3.5.1. Ms. Simpson, on behalf of the 6th and 7th Respondents, argued that the 11th Applicant application for review did not make out a case for the order sought and did not contain sufficient grounds for review. She argued that the 11th Applicant did not show any direct loss and the 11th Applicant failed to discharge its onus to show on good grounds that the decision by the CPBN is reviewable.
- 3.5.2. Ms. Simpson argued that the 11th Applicant in its application for review did not address the prejudice that would be suffered by the Namibian child if this bid is delayed and implored the Review Panel to consider the prejudice that would be suffered by the Namibian child if this bid is delayed. She further argued that sending the matter back to the CPBN to review the matter encourage a delay in this matter.
- 3.5.3. The 6th Respondent, in its replying affidavit, contended that once a bid passes the first phase of evaluation, which relates to mandatory documents under ITB 12, the CPBN was entitled in terms of the bidding documents to make certain decisions even if such decisions may deviate from certain discretionary requirements.
- 3.5.4. The 6th and 7th Respondents argued that bidders who did not submit documents as required in terms of Section 50 (2) of the Public Procurement Act were automatically disqualified as these documents are mandatory. Ms. Simpson further argued that if no case has been made out to prove that a conflict of interest arose with certain bidders having the same accounting officer.
- 3.5.5. Regarding previous catering experience, the 6th and 7th Respondents argued that there was no requirement in this bid that a bidder's trade/business must have a reference to catering and neither that a bidder would be disqualified if such bidder did not have previous catering experience. Ms. Simpson argued that company documents only indicate who you are and not what you do.

- 3.5.6. Ms. Simpson finally argued that the 11th Applicant's information on SAIBA cannot be used as evidence in this matter as there is no one to certify the information provided in the 11th Applicant's application for review and SAIBA was not a requirement set out in this bid.
- 3.5.7. Based on the above, the 6th and 7th Respondents requested that the 11th Applicant's application for review be dismissed.
- 3.6. 8th Respondent - Stream Two Properties
9th Respondent - Ndakalimwe Investments CC**
- 3.6.1. Ms. Janke, on behalf of the 8th and 9th Respondents, argued that when an applicant wants a decision reviewed, such review falls within the ambit of administrative law and an applicant must have proper grounds set out in its application for review. She argued that the grounds to be addressed inter alia include that there must be a disqualifying basis, legitimate expectation and proof that the administrative body did not act fairly and reasonably or in compliance with relevant legislation and abuse of discretion. The 8th and 9th Respondents contended that the 11th Applicant's application for review did not address the ground for review which they ought to have addressed in their application for review.
- 3.6.2. The 8th Respondent, in its replying affidavit, contended that the 11th Applicant's application for review, was brought to the Review Panel purely to cry foul because its bid was declared unsuccessful and is an attempt to avoid its non-compliance to the requirements set out in the bidding documents.
- 3.6.3. The 8th Respondent further argued that the CPBN rightfully in terms of Section 52 (5) of the Public Procurement Act, corrected the man-day prices of the 8th Respondent. It argued that arithmetical errors are provided for in terms of the Public Procurement Act and may thus be implemented by the CPBN. Ms. Janke therefore argued that the averment by the 11th Applicant that all bids of the successful bidders was adapted after the closing of bids is factually incorrect.
- 3.6.4. The 8th and 9th Respondents added that a bid must not only be awarded to the lowest evaluated bid but a bidder must in addition to price, meet the qualification criteria specified in the bidding documents. The 8th and 9th Respondents met the qualification criteria set out in this bid.
- 3.6.5. The 8th Respondent in its affidavit stated that the relationship between it and its accounting officer does not in any way directly, indirectly or through any common third party put the 8th Respondent in a position to have access to information about or influence on the bid of another bidder, or influence the decision of the CPBN regarding the bidding process. The accounting officer of the 9th Respondent is Mr. Sam Shipofi and thus have a different accounting officer from the other bidders. The conflict of interest argument raised by the 11th Applicant is thus not applicable to the 9th Respondent.

3.6.6. The 8th and 9th Respondents argued that the 11th Applicant did not allege that the decision of the CPBN was unlawful neither did it not allege that that the procedure followed by the CPBN to evaluate the bids were unlawful.

3.6.7. Ms. Janke argued that if the award of the CPBN be set aside by the Review Panel, it would be unfair towards the Respondents and it would encourage anti-competitive practices by the Applicants. In light of the above, the 8th and 9th Respondents requested the Review Panel to dismiss the 11th Applicant's application for review.

3.7. 10th Respondent – Sash Trading and Earthworks CC

3.7.1. Mr. Mwandangi, on behalf of the 10th Respondent, informed the Review Panel that they agreed with the interpretation by the 3rd Respondent regarding Section 55 of the Public Procurement Act and Regulation 38. The 10th Respondent therefore argued that the Applicants in this matter should first have sent this matter for reconsideration to the CPBN before lodging their applications for review with the Review Panel. He therefore argued that the applications for review are therefore improperly before the Review Panel.

3.7.2. Mr. Mwandangi further argued that the main purpose of the Public Procurement Act is Namibianization. The purpose of the new Public Procurement Act was to ensure that no Namibian would be left out.

3.7.3. Mr. Mwandangi at the Hearing informed the Review Panel that the Applicants have not provided any grounds that necessitate setting aside the decision made by the CPBN. The decision by the CPBN was clear and there was no glaring misdirection by the CPBN which necessitates the setting aside of the said decision by the CPBN.

3.7.4. In its replying affidavit, the 10th Respondent like other Respondents argued that arithmetical errors can be lawfully corrected and is provided for in Section 52 (4) of the Public Procurement Act.

3.7.5. The 10th Respondent in its affidavit further argued that it was the 11th Applicant's responsibility to ensure that it examined all instructions, forms, terms and specifications set out in the bidding documents of this bid. Instructions to bidders are there for a reason. Further that non-compliance or material non-conformity with the bid requirements is fatal to a bidder's application. Further, clarification 42 by the CPBN clearly indicated to all bidders that there was a need to submit valid mandatory documents prior to the bid closing date.

3.7.6. Mr. Mwandangi argued that 80% of this bid relates to logistics and that experience in catering was not enough. In addition, experience is not more important than compliance to the requirements set out in the bidding documents.

3.7.7. Mr. Mwangi finally argued that the Bid Evaluation Committee was obliged to evaluate the bid according to the instructions to bidders. It was therefore not in the discretion of the Bid Evaluation Committee to afford itself the discretion to entertain an invalid Social Security Commission's Good Standing Certificate. As a general principle the Bid Evaluation Committee could not condone a non-compliance with the bidding document.

3.7.8. In light of the above, the 10th Respondent requested that the application for review by the 11th Applicant be dismissed by the Review Panel.

3.8. 11th Respondent – Tuthikameni Pamwe Investment CC

3.8.1. The 11th Respondent did not file a replying affidavit in this matter. At the hearing of this matter, the Review Panel afforded the 11th Respondent an opportunity to make representations to the Review Panel. The 11th Respondent however informed the Review Panel that it stands by the views advanced by the CPBN during the course of the hearing.

4. INTERESTED PARTIES REPRESENTATIONS

4.1. At the Hearing, the Review Panel afforded interested parties to make representations to the Review Panel orally. The representations of the interested parties are summarized herein below.

4.2. 12th Respondent - Hibachi Investment Holdings (Pty) Ltd

4.2.1. Mr. Patrick Kauta, on behalf of the 12th Respondent, informed the Review Panel that the decision by the CPBN was suspended by Section 55 (5) of the Public Procurement Act. The Review Panel can therefore not hear the applications for review.

4.2.2 Mr. Kauta argued that Sections 59 (1) and 59 (4) provides two reviews to bidders. The first review is a review to the Public Entity / CPBN and the second review is in terms of Section 59 of the Public Procurement Act. In terms of Section 55 (1) of the Public Procurement Act, the accounting officer must award the contract where there is no review. In terms of Regulation 38, the CPBN must first assess all applications for review. There is thus no decision at this stage by the CPBN and therefore there can be no review to the Review Panel.

4.3 13th Respondent - PDN Consortium Food Production (Pty) Ltd

4.3.1 Mr. Kaura Kaura, on behalf of the 13th Respondent, informed the Review Panel that the applications for review were lodged prematurely with the Review Panel and should have been lodged with the Review Panel after the CPBN had reconsidered its award after the standstill period.

4.4 14th Respondent – M & H Trading Enterprises

- 4.4.1 Ms. Maria Heita, on behalf of the 14th Respondent, argued that the evaluation of this bid was conducted unfairly. She further argued that other certificates like that of the Ministry of Inland Revenue have an expiry date and if the Social Security Commission's Good Standing Certificate has an expiry date why does such date not appear on it.

5. FINDINGS OF THE REVIEW PANEL

- 5.1. Having heard the grounds of review of each Applicant, the Review Panel observed that ultimately the fairness and the reasonableness of the evaluation of the bid was challenged on both procedural and substantive grounds.

5.2. Bid Validity

- 5.2.1. Section 49 (1) and Section 49 (2) of the Public Procurement Act reads as follows:

"(1) A bid remains valid for the period as indicated in the bidding documents which may not more than 180 days.

(2) The validity period of a bid may be extended only with the agreement of the bidder concerned."

- 5.2.2. The closing date of this bid was 9 September 2020. ITB 21.1 in the Bidding Data Sheet of this bid indicated that the bid validity period shall be 180 days. The bid was valid for 180 from 9 September 2020 and thus was to expire on or about 08 March 2021. The Board, however, on or before 27 January 2021 requested bidders in writing to extend the bid validity period for a further sixty-day period from 16 February 2021 to 17 April 2021.

- 5.2.3. The Review Panel was informed by the 1st Respondent that a number of bidders agreed to the extension of the bid validity period.

- 5.2.4. The Review Panel found that bids of bidders who have not agreed to the extension of the bid validity period in writing have expired as the validity period of such bids has expired on or about 8 March 2021. The bids of the bidders who have agreed to the bid validity extension period requested by the Board remain valid in terms of Section 49 (2) of the Public Procurement Act.

5.3. Service of Review Applications in terms of Section 59 of the Public Procurement Act and Regulation 42

- 5.3.1. Eleven applications for review in terms of Section 59 of the Procurement Act read with Regulation 42, were received by the Secretariat of the Review Panel. The 3rd Respondent at the Hearing of this matter argued that the applications for review were not served

timeously as per Regulation 42 of the Regulations and that the method of service was not done as per Section 57 of the Public Procurement Act.

5.3.2. Regulation 42 (1) reads as follows:

"A supplier or bidder who wishes to lodge an application for review under Section 59 of the Act must, within 7 days of receipt of the decision or action taken by a public entity, apply to the Review Panel for review."

Regulation 42 (3) reads as follows:

"The supplier or bidder must lodge the review application with the Review Panel and serve copies of the review application on a public entity referred to in subregulation (1) and on any other interested person."

Regulation 57 (2) and (3) reads as follows:

"(2) A notice, order or other document required to be served or delivered to any person in terms of these regulations may be served-

- (a) by delivering it personally to such person or the person's duly authorised agent;*
- (b) where a postal address is give, by transmitting it by facsimile to that address;*
- (c) where a facsimile number has been given, by transmitting it by facsimile to that address;*
- (d) by delivering it at the person's place of residence or place of employment or place of business to a person apparently 16 years of age or older and apparently residing or employed there; or*
- (e) in the case of a juristic person, at its local office or principle place of business to a director, secretary or any other person responsible for the management of the juristic person;*

(3) Service may be proved-

- (a) in any case, by an acknowledgment of service signed by the person to be served;*
- (b) by written statement of the person who made the service; or*
- (c) service by registered post may be proved by a signed post-office receipt showing that the letter was send."*

5.3.3. The Review Panel found that an application for review by a bidder must be served on the Review Panel within 7 days of receipt of the decision or action taken by a Public Entity. The Board on or about 23 February 2021 informed the bidders of its decision to award this bid to nine bidders listed therein in the form of a notice as contemplated in terms of Section 55 (4) of the Public Procurement Act. Aggrieved bidders therefore in terms of Regulation 42 (1) must have served such applications on the Review Panel by 2 March 2021.

- 5.3.4. The Review Panel observed that 9 of the 11 Applicants served their applications for review timeously. The 4th Applicant, being Camelot Investment Group (Pty) Ltd, and the 9th Applicant, being Atlantic Catering Solutions (Pty) Ltd, served their applications for review out of the required seven-day period. However, the Review Panel invited and joined all parties to this bid as interested parties. At the Hearing, interested parties were in addition afforded the opportunity to present their concerns and therefore even if applications for review of the 4th and 9th Applicants were out of time, such submissions were considered by the Review Panel as submissions of interested parties.
- 5.3.5. The next matter the Review Panel had to deal with is whether the Applicants provided proof of service on other bidders as contemplated in Regulation 57 (3). The Review Panel was provided with proof of service by the 5th to 8th Applicants and the 11th Applicant.
- 5.3.6. At the Hearing of this bid, the 3rd Respondent argued that service may not be effected by electronic mail. The Review Panel considered a Circular dated 1 September 2020 issued by the Minister of Finance titled 'General exemption to all public entities with regard to the service of documents as per regulation 57 of the Regulations to the Public Procurement Act, 2015 in light of Covid-19.' The Circular was sent to all accounting officers of public entities and the Secretary to the Review Panel. The Review Panel found that in terms of this Circular the Minister of Finance granted a general exemption from the provisions of Regulation 57. The exemption was general applicable to both public entities and bidders.
- 5.3.7. The Review Panel found that it only needed one application for review to meet all the requirements set out in Regulations 42 (1), 42 (3) and 57 to proceed and hear a review in terms of this bid. As narrated above, more than one application of review to this matter was filed in accordance with Regulations 42 (1), 42 (3) and 57.

5.4. Social Security Commission's Good Standing Certificate

- 5.4.1. It is common cause that the Bid Evaluation Committee for this bid disqualified numerous bidders on the ground that their Social Security Commission's Good Standing Certificates were not valid. ITB 12.1 (h) (4) of the bidding document reads as follows:

"the following documentary evidence is required.....-

(4) valid original or Namibian Police or Commissioner of Oaths certified good Standing Social Security Certificate."

- 5.4.2. Section 50 (2) (b) of the Public Procurement Act further provides that:

"A bidder or supplier is disqualified from bidding if such bidder or supplier is not in possession of a valid certificate of good standing with the Social Security Commission or, in case where a company has no employees, a confirmation letter from Social Security Commission."

Based on the wording of this section, the Review Panel found that a bidder or supplier is only required to prove three elements; firstly, being in possession of a Social Security

Commission's Good Standing Certificate; secondly, that such certificate is valid and thirdly that the Social Security Commission issued the said certificate. The 1st Respondent did not argue that the Applicants were not in possession of Social Security Commission's Good Standing Certificates nor did the 1st Respondent argue that such certificates were not issued by the Social Security Commission and therefore the Review Panel will only deal with the issue of validity.

- 5.4.3. It is common cause that the Social Security Commission's Good Standing Certificates issued by the Social Security Commission in terms of this bid did not indicate a bid validity period. The Public Procurement Act, the Regulations nor the Social Security Act, 34 of 1994 or its accompanying Regulations define what constitutes a valid Social Security Commission's Good Standing Certificate. In the absence of statutory definition, the ordinary dictionary meaning should be used. In The Concise Oxford Dictionary of Current English (8th Edition), the definition of the word "valid" possesses meanings of "legally acceptable" and "not having reached its expiry date".
- 5.4.4. At the Hearing and in the affidavits of the Board, it became apparent that the Bid Evaluation Committee interpreted "valid" to mean that the certificate has a limited period of validity. It was the understanding of the Bid Evaluation Committee that a valid Social Security Commission's Good Standing Certificate must not be older than thirty (30) days, calculated backwards from the closing date of the bid. The Bid Evaluation Committee in this matter informed the Review Panel that they did not rely on any letter from the Social Security Commission and thus the advice of the Social Security Commission was not at play in this instance but the decision of the Bid Evaluation Committee to interpret validity to have meant 30-days validity period.
- 5.4.5. The Review Panel noticed that good standing certificates from other offices like the good standing certificates issued by the Inland Revenue at the Ministry of Finance and the affirmative action certificates issued by the Employment Equity Commission have expiry dates clearly stipulated specified on such documents whilst the one from the Social Security Commission does not. Therefore, The Review Panel finds that the Board incorrectly assumed that the participants to this bid ought to have known that the Social Security Commission's Good Standing Certificate had an expiry date or was linked to a validity period.
- 5.4.6. In light of the above, the Review Panel found that the Board had materially misdirected itself and/or acted procedurally and unreasonably when it disqualified bidders whose Social Security Commission's Good Standing Certificate was 30 days older than 7 September 2020. At the Hearing, the 1st Respondent argued that clarification was sought by one bidder regarding the Social Security Commission's Good Standing Certificate. The Review Panel found that the clarification does not take the matter neither here nor there. The clarification given by the 1st Respondent did not state that the Social Security Commission's Good Standing Certificate must not be older than thirty days and therefore its clarification was not clear on aspects of the Social Security Commission's Good Standing Certificate. The

Review Panel further noted that the bid closing date was initially extended due to the COVID-19 pandemic and bidders who obtained Social Security Commission's Good Standing Certificates in preparation of the first closing date should not have been disqualified.

- 5.4.7. The 1st Respondent ought to have evaluated the bids of bidders whose Social Security Commission's Good Standing Certificates are compliant to the requirements of Section 50 (2) of the Act being possession (having, owing or controlling), valid meaning "legally acceptable" or "not having reached its expiry date" and issued by the Social Security Commission.

5.5. Namibianization

- 5.5.1. ITB 3.1 (b) on page 35 of the bidding document provides as follows:

"The Namibianization aspect would assess the extent of a number of salient elements:

- i. Entities incorporated in Namibia with 100% equity owned by Namibian citizens of which no less than 51% should be owned by previously disadvantaged persons.*
- ii. Company registration in Namibia, which may be evidenced by Certificates of Incorporation, Memorandum and Articles of Association, Partnership Deed etc.*
- iii. Reservation is given to suppliers based and operating in the regions under the lot (s) that they are bidding for.*
- iv. Organogram showing proof of Namibians employed (proof of social security certificate and identity documents) for existing companies or letter of intent to employ Namibians in the company for new companies."*

- 5.5.2. The Review Panel found that the Bid Evaluation Committee used written guidelines to complete the evaluation sheet. According to these guidelines, the Review Panel found under the Namibianization category, bids were evaluated on the following items under Namibianization:

- o No less than 30% is owned by previously disadvantaged persons;*
- o Women and youth participation in the ownership and management of the company;*
- o Organogram showing extent of Namibians employed in the company;*
- o Suppliers based and operating in the regions under the lot (s) that they are bidding for;*
- o Suppliers only based and not operating in the regions under the lot (s) that they are Bidding for; and*
- o Suppliers only operating and not based in the regions under the lot (s) that they are Bidding for.*

- 5.5.3. The Review Panel found that there were stark differences between the ITB and the actual evaluation criteria eventually used. The Review Panel further noted that the Bid Evaluation Committee examined bids on extra criteria not contained in the bidding document. An example of this is that bids were scored based on women and youth participation in the ownership and management of the company whilst this criterion was not set out in the

bidding document. The evaluation done by the Bid Evaluation Committee on this aspect is thus ultra vires to Section 52 (9) of the Act.

5.5.4. Section 29 of the Public Procurement Act provides that:

"A public entity may limit participation in open advertised bidding proceedings-

- (a) to the citizens of Namibia; or*
- (b) entities incorporated in Namibia with no less than 51 percent equity that is owned by Namibian citizens of which no less than 30 percent is owned by previously disadvantaged persons.*

where such limitation is stated in the invitation for pre-qualification or bidding and is in accordance with the prescribed criteria."

5.5.5. ITB 3.1 (b) on page 35 of the bidding document is thus ultra vires to Section 29 of the Public Procurement Act in that it set a different bar for Namibian participation to that set out in the Public Procurement Act. Nevertheless, the Review Panel observed that the Bid Evaluation Committee in their actual evaluation evaluated the Namibianization aspect according to the Act. For example, the ITB 3.1 (b) on page 35 of the bidding document provided that 51% should be owned by previously disadvantaged persons however in the actual evaluation the criteria scored on was that 30% should be previously disadvantaged persons.

5.6. Storage Facility/Warehouse – Evaluation

5.6.1. ITB 3.1 (e) on page 35 of the bidding document stipulated that the supplier should provide documentary evidence of storage facilities as per Standards for Storage Foodstuffs at Warehouse(s) of the supplier. Annexure "A" of the bidding document further set out standards for storage of foodstuffs at warehouses of bidders.

5.6.2. The Review Panel found that the Bid Evaluation Committee conducted a site inspection of the warehouses of the bidders. The Bid Evaluation Committee scored the warehouse of the bidders using the following criteria:

- "Warehouse easily accessible from the road, storage facility/warehouse clean;*
- All interior surfaces without open joints, cracks or seams;*
- Each room of warehouse efficient/effectively ventilated (windows available/functionality);*
- Illumination effective (day light and artificial illumination);*
- Ablution and hand wash facilities available (soap, hand towel);*
- Cooling and freezer facility for perishable goods and provided;*
- Grounds free from cuts weeds and grass, litter and excreta of birds and animals-inside and outside of the facility;*
- Ablution and handwashing facilities available for male and female separately;*
- Ablution and handwashing facilities clean (presence of running water, litter);*
- Proof of warehouse ownership or lease agreement or letter of intent to lease;*

Warehouse location, size and owners contact details on ownership document, lease/letter of intent.”

The Review Panel thus found that the Bid Evaluation Committee scored bidders on extra criteria such as hand towels and soap not contained in Annexure “A”. Section 52 (9) of the Public Procurement Act requires that every bid must be evaluated according to the criteria and methodology set out in the bidding document.

5.6.3. The Review Panel further found that in the scoring matrix the Bid Evaluation Committee only scored the bids on proof of ownership, letter of intent and lease agreement and did not translate the scores of the site inspection to scoring matrix. The Review Panel in the scoring matrix could find how the inspection scores were tabulated in the scoring matrix.

5.6.4. The Review Panel further noted that in the final evaluation the Bid Evaluation Committee scored a bidder who has ownership of a warehouse higher than a bidder who has a lease agreement. The Review Panel found that the ITB on storage facilities on page 35 of the bidding document only requested a bidder to provide documentary evidence of storage facilities. The bidding document did not inform a bidder that possession of a warehouse would score higher than leasing a warehouse. The evaluation conducted by the Bid Evaluation Committee was not as per the requirement set out in the bidding document.

5.7. Evaluation Method used by the Bid Evaluation Committee:

5.7.1. Section 52 (9) of the Public Procurement Act provides that:

“Every bid is evaluated according to the criteria and methodology set out in the bidding documents and the evaluated cost of each bid is compared with the evaluated cost of other bids to determine the most economically advantageous bid.”

The bid must therefore firstly be evaluated according to the criteria and methodology set out in the bidding document and secondly each bid is compared with the evaluated cost of other bids to determine which is the most economically advantageous bid.

5.7.2. Having studied the evaluation sheets of the Bid Evaluation Committee, the Review Panel found that evaluation of this bid was not done in accordance with the criteria and methodology set out in the bidding document as described further below.

5.7.3. Firstly, the bids were evaluated on criteria not set out in the bidding document. As stated above, the bids who had women and youth participation in the management of the company scored higher when this was not a criterion set out in the bidding document.

5.7.4. Secondly, the methodology used to evaluate the bid was not set out in the bidding document. The bidding document on page 37 set out the methodology on how the bids would be evaluated by the Bid Evaluation Committee. The criteria – weightings on page 37 of the bidding document reads as follows:

“Phase one - 0%

Phase two - 35%

Phase three (3.1) - 25%

Phase three (3.2) - 40%

Total Score weights - 100%

5.7.5. The Review Panel found and agreed that a bidder who did not have the mandatory documents set out in Phase 1 of the bid such could automatically be disqualified at Phase 1 because this was provided for in the bidding document. However, the Review Panel could not find any methodology set out in the bidding document that states that if a bid scored below a certain score at a certain phase, such bid would be disqualified and cannot be evaluated at the next phase.

5.7.6. In addition, the scoring criteria was not set out in the bidding document. For example, the Review Panel noted that ownership of warehouse scored higher than proof of a lease agreement and similarly ownership and lease of a vehicle. The bidding document did not set out whether ownership or lease would score more or less points. Thus, the methodology chosen by the Bid Evaluation Committee was not set out in the bidding document. A further example is on page 33 of the bidding document which states required documents is "80% Survey Schedules or school hostels in regions tendered for". When evaluating, the Bid Evaluation Committee scored bids who provided the 80% survey schedules 8 out of 15 points whilst the requirement in the ITB was 80% survey schedules. Such bidders ought to have obtained full marks.

5.7.7. The Review Panel further found that the Bid Evaluation Committee conducted a site inspection. The bidders' warehouse and vehicles were inspected and scored on criteria set out in the site inspection score sheet. The Review Panel found that the scores contained in the site inspection scoresheet were not tabulated in the final evaluation scoresheet. In addition, the scores contained in the site inspection scoresheet do not correlate with the final evaluation scoresheet. Regarding the evaluation, the Review Panel finally found that the scoring matrix, the guidelines on the evaluation and the site inspection scoring sheet do not correlate with each other.

5.8. Arithmetical Errors

5.8.1. Section 52 (5) of the Public Procurement Act provides that:
"Where a bid discloses an arithmetical error, the Board or public entity concerned must correct the error and notify the bidder."

5.8.2. The Review Panel at the hearing of this matter was informed that the Bid Evaluation Committee found arithmetical errors in the bids of the successful bidders and corrected such arithmetical errors. The Review Panel was further informed that the bidders were

notified as per Section 52 (5) of the Act. The representatives of the Bid Evaluation Committee explained at the hearing of this matter that they calculated the totals of the menu prices of the bids. The total prices of the menus were in certain instances not calculated correctly. The Bid Evaluation Committee corrected the calculations of the menus' totals.

- 5.8.3. The Review Panel found that if there is a discrepancy between the unit price and the total price this must be corrected as an arithmetical and notify the bidders. The Review Panel therefore found that the method applied to correct the arithmetical errors was correctly done so by the Bid Evaluation Committee.

5.9. Conflict of Interest

- 5.9.1. The 11th Applicant informed the Review Panel that four of the nine successful bidders had the same accounting officer. In addition, this accounting officer is the owner of one of the successful bidders.

- 5.9.2. The Review Panel found that there is no direct conflict in having the same registering accounting officer. The Review Panel found that the 11th Applicant could not prove that the said accounting officer has direct interest in the other bidders' companies. Further, being an accounting officer of a company does not equate or translate into direct shareholding in a company and therefore a conflict could not be proven.

5.10. Bidders Specific Findings

- 5.10.1. Certain Applicants notified the Review Panel that they did submit the documents which the CPBN alleges that they did not submit in their bidding documents. The Review Panel perused the bidding documents and made the findings below.
- 5.10.2. Having perused the bidding document of the 1st Applicant, the Review Panel found that the 1st Applicant did submit letters of intent for the supply or sourcing of fresh produce, meat and other products from local producers or suppliers north of the cordon fence.
- 5.10.3. Having perused the bidding document of the 2nd Applicant, the Review Panel found that the 2nd Respondent submitted an original Social Security Commission's Good Standing Certificate. The Review Panel found that the 2nd Applicant did not submit letters of intent for the supply or sourcing of fresh produce, meat and other products from local producers or suppliers north of the cordon fence. The Review Panel found that the 2nd Applicant did submit the requested documents relating to the prove Namibianization in terms of Section 29 of the Public Procurement Act.
- 5.10.4. Having perused the bidding document of the 9th Applicant, the Review Panel found that the 9th Applicant did submit the necessary documentation to prove Namibianization as per Section 29 of the Public Procurement Act but did not submit the conflict of interest declaration.

- 5.10.5. Having perused the bidding document of the 10th Applicant, the Review Panel found that the 9th Applicant submitted an organisational structure but did not provide for a dietician as required in the bidding document.
- 5.10.6. Having perused the bidding document of the 7th Applicant, the Review Panel found that it did not submit the conflict of interest declaration. The 7th Applicant did submit an organisational structure but the structure did not include the positions required in the ITB.

DECISIONS OF THE REVIEW PANEL

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

1. That the 1st Respondent's Notice of Selection for the Award in respect of bid number G/ONB/CPBN-1/2020 for Procurement of Supply Foodstuffs to Government School Hostels, and/or any decision or action incidental thereto not in compliance with this Act, are set aside in whole.
2. That this matter (bid) is referred back to the 1st Respondent for reconsideration with specific instructions, in terms of Section 60 (c) of the Public Procurement Act, 2015.

The specific instructions are as follows:

- 2.1 That the 1st Respondent re-evaluate the bids that contained Social Security Commission's Good Standing Certificates issued in respect of this bid.
- 2.2 That the 1st Respondent re-evaluate the bids on other all other aspects that are highlighted in this Order i.e. Namibianisation, Storage Facility/Warehouse, et al.
- 2.3 That the re-evaluation of the bids be done 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.
- 2.4 That the re-evaluation herein is limited to bidders that have agreed in writing to the extension of the bid validity period in accordance with Section 49 (2) and/or 43 (3) (if applicable).
- 2.5 That if the re-evaluation herein takes longer than the remaining portion of the extended bid validity period, the 1st Respondent should seek another extension with bidders.



BROWNY MUTRIFA
CHAIRPERSON: REVIEW PANEL (i.r.o. this matter)





REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 209 2391

Fax : (00 264 61) 236454

Telex: 908-3369

Enquiries: **K. Kashonga**

Head Office,
Moltke Street,
Private Bag 13295,
Windhoek

**IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 25 MARCH 2021**

IN THE MATTER BETWEEN

VIRTUA TECHNOLOGIES (PTY) LTD

APPLICANT

AND

MINISTRY OF ENVIRONMENT, FORESTRY AND TOURISM

PROFILE TECHNOLOGIES PTY LTD

TACTICAL SOLUTION NAMIBIA (CSS)

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

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

BID NO: W/RB/18-01/20-21 REPAIR AND INSTALLATION OF SYSTEM AND SURVEILLANCE CAMERA CONTROL SYSTEM SERVICES.

Present: Dr. Petrina Johannes (Chairperson) Dr. Rainer Trede and Hellen Amupolo concurring. Michael Gaweseb and Selma- Penna Utonih dissenting.

Heard: 25 March 2021

Decided: 25 March 2021

REVIEW PANEL ORDER

Having heard Ms. Emilia Nehale for the Applicant, Mr. Teofilus Nghitila for the 1st Respondent, as well as other joined interested parties, respectively, and subsequently having read the application for review in terms of Section 59(1) of the Procurement Act (15 of 2015) read with Regulation 42 of the Public Procurement Act. (15 of 2015) and other documents filed of record, the Review Panel observed the following:

1. *That the 1st Respondent acted contrary to Regulation 7(2) when it failed to commence with the process of examination and evaluation of bids in accordance with Section 52 of the Act within five (5) days after the opening of bids;*
2. *Further that the 1st Respondent acted contrary to Regulation 42 (4) when it fails to submit a Replying Affidavit to the allegations made by a bidder, within five days upon being served with the copies of review application;*
3. *That the 1st Respondent acted contrary to Section 52(9) of the Public Procurement Act, Act 15 of 2015 (hereinafter referred to as the Public Procurement Act) when it used an evaluation criteria and methodology that was not set out in the bidding document.*
4. *That the 1st Respondent acted contrary to Section 49(2) and Section 49(3) of the Public Procurement Act, when it failed to request for the extension of the validity period of the bid and the accompanying bid security (where applicable) with the bidders.*
5. *That the 1st Respondent acted contrary to Regulation 6 (3) when a committee other than the Bid Evaluation Committee took a decision to cancel the bid.*

Notwithstanding the foresaid observations, the Review Panel found that the Application for Review herein relates to a bid that has exceeded its bid validity period in terms of Section 49(1) and the 1st Respondent has failed to extend the period by procuring an agreement of the bidders. As a result the bid is therefore invalid *ex lege*.



IN THE REVIEW PANEL
HELD ON 2 NOVEMBER 2017

LEX TECHNOLOGIES (PTY) LTD

APPELLANT

AND

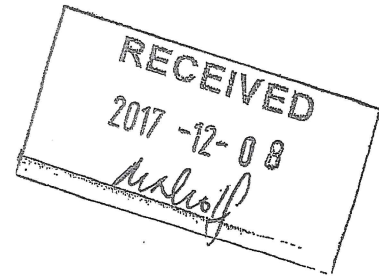
CENTRAL PROCUREMENT BOARD OF NAMIBIA
ROADS AUTHORITY

RESPONDENT
RESPONDENT

ORDER

Having heard the Parties, on the 2nd November 2017 at the Ministry of Finance Head Office building, Moltke Street, the Review Panel made the following order-

- [1] The Applicant's review application is dismissed as the Central Procurement Board has not discharged its duty. In short the Central Procurement Board is not *functus officio*.
- [2] The decision to endorse the evaluation committee initially appointed by the Roads Authority as the evaluation committee to evaluate the bid in this matter is set aside.
- [3] The evaluation report by persons not appointed after consultation with the Central Procurement Board is set aside.



REPUBLIC OF NAMIBIA

REVIEW PANEL

Tel. : (00 264 61) 2099111

Fax : (00 264 61) 236454

Telex: 908-3369

Enquiries: M. Jonga

10 John Meinert Street

Fiscus Building

Private Bag 13295

Windhoek

08 December 2017

The Chief Executive Officer
Namibia Training Authority
P O Box 70407
Khomasdal
Windhoek

Dear Mr. Beukes,

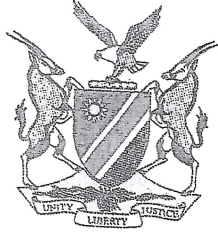
By Hand Delivery

RE: APPLICATION FOR DEBARMENT AND SUSPENSION IN TERMS OF
SECTION 68 OF THE PUBLIC PROCUREMENT ACT, ACT 15 OF 2015: MULTI
SOLUTIONS CC.

Attached hereto please find the decision of the Review Panel in relation to the captioned
matter.

Yours sincerely,

FILLEMÓN WISE IMMANUEL (MR)
CHAIRPERSON: REVIEW PANEL (IRO OF THIS MATTER)



REPUBLIC OF NAMIBIA

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 2099111

Fax: (00 264 61) 236454

Telex: 908-3369

Enquiries: M. Jonga

10 John Meinert Street

Fiscus Building

Private Bag 13295

Windhoek

IN THE REVIEW PANEL

HELD ON 08 FEBRUARY 2018

IN THE MATTER BETWEEN:

OMATANDO CONSTRUCTION COMPANY

APPLICANT

AND

KAMANJAB VILLAGE COUNCIL

RESPONDENT

APPLICATION FOR REVIEW IN TERMS OF SECTION 59 OF THE PUBLIC
PROCUREMENT ACT, ACT 15 OF 2015: W/SBD/KVC-02/2017



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 209 2445

Fax : (00 264 61) 236454

Telex: 908-3369

Enquiries: **K. Kashonga**

Head Office,
Moltke Street,
Private Bag 13295,
Windhoek

**IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 13 MAY 2020**

IN THE MATTER BETWEEN

BRANDHUT CONSULTANCY CC

APPLICANT

AND

AIR NAMIBIA

1st RESPONDENT

PARAGON INVESTMENT

2nd RESPONDENT

TIME INVESTMENT NAMIBIA

3rd RESPONDENT

NEW PAGE GRAPHIC DESIGN AND PRINTING

4th RESPONDENT

**IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC
PROCUREMENT ACT, ACT 15 OF 2015, REGARDING BID NO: NCS/ONB/SW-
02/2020 PUBLISHING AND SUPPLY OF THE FLAMINGO INFLIGHT MAGAZINE**

**Coram: Petrina Johannes (Chairperson), with Brownly Mutrifa, Rainer Trede,
Michael Gaweseb and Hellen Amupolo**

Heard: 13 May 2020

Decided: 13 May 2020



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

Tel. : (00 264 61) 209 9016

Fax : (00 264 61) 236454

Telex: 908-3369

Enquiries: M.R. Jonga

Head Office,
Molfke Street,
Private Bag 13295,
Windhoek

IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 10 AUGUST 2020

IN THE MATTER BETWEEN

NAMIBIA PROTECTION SERVICES

APPLICANT

AND

THE CENTRAL PROCUREMENT BOARD OF NAMIBIA

1st RESPONDENT

The University of Science and Technology (NUST)

2nd RESPONDENT

PIS SECURITY SERVICES CC

3rd RESPONDENT

AND 19 OTHERS

4th-19th RESPONDENTS