

REPUBLIC OF NAMIBIA
MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 18 MARCH 2021

IN THE MATTER BETWEEN

MORGAN AND QUEEN MEDICAL SUPPLIES CC

APPLICANT

AND

MUNICIPALITY OF SWAKOPMUND
O. BEHRENS & CO. (PTY) LTD T/A OBECO
DIPLOMATIC DYNAMIC CC
PHIM INVESTMENTS
AFRIHOST TRADING GROUP
LEISURE WORLD & EQUIPMENT
TESLA ENERGY SOLUTIONS

1st RESPONDENT
2nd RESPONDENT
3rd RESPONDENT
4th RESPONDENT
5th RESPONDENT
6th RESPONDENT
7th RESPONDENT

**HEAT EXCHANGE PRODUCTS
OMBUKA ENTERPRISES CC**

8th RESPONDENT

9th RESPONDENT

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

BID NO: W/ONB/SM-005/2020: SUPPLY AND DELIVERY OF IPERL
ELECTROMAGNETIC WATER METER AND AG800 WATER
METER BOXES

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

Heard : 18 March 2021
Decided : 19 March 2021

REVIEW PANEL ORDER

Having heard Ms. Kula Simson representing the Applicant, and Mr. Piet Burger representing the 1st Respondent, and other interested parties who attended the hybrid physical and virtual hearing proceedings;

Further having read the Application for Review and other documents filed as part of the record, the Public Procurement Review Panel subsequently find the following:

1. The Review Panel was informed that on 24 February 2021, the Respondents informed all bidders who participated in the bid that it had resolved to cancel the said bid. The 1st Respondent informed the Review Panel that it rejected all bids in terms of Section 53 (1) and (2) of the Public Procurement Act, 2015 (Act No. 15 of 2015) (hereinafter referred to as the "Public Procurement Act").
2. Regulation 42 (1) of the Public Procurement Act provides that:

"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."

3. It is common cause that the 1st Respondent's decision to cancel the aforesaid bid was communicated to the bidders on 24 February 2021. Neither the Public Procurement Act nor its accompanying Regulations define how days for the performing of an action in terms of the Public Procurement Act is calculated. Therefore, in the calculation of days, the Review Panel relies on the Interpretation of Laws Proclamation 37 of 1920

(hereinafter referred to as the 'Proclamation'). Section 4 of the Proclamation provides that:

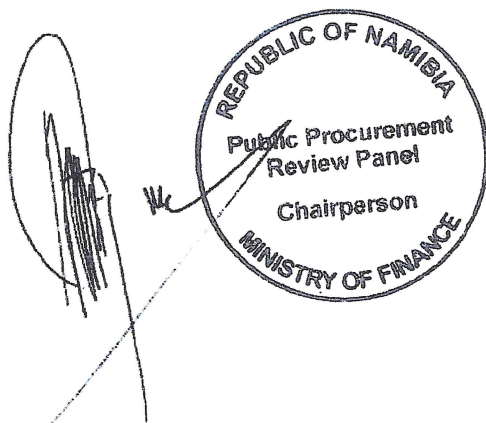
"When any particular number of days is prescribed for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day shall happen to fall on a Sunday or on any other day appointed by or under the authority of a law as a public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every Sunday or public holiday."

4. The Review Panel observed that the Applicant had an obligation under Regulation 42 (1) to lodge its Application for Review in terms of Section 59 of the Public Procurement Act by 3 March 2021. The Applicant lodged its Application for Review on the Review Panel on 4 March 2021. The Review Panel noted that the language used in Regulation 42 (1) is crafted in mandatory terms. The word 'must', as contained in Regulation 42 (1), places a mandatory obligation on a bidder to lodge an Application for Review with the Review Panel within 7 days of receipt of a decision or action taken by a Public Entity.
5. Further, the Review Panel in terms of the Public Procurement Act does not have the power to condone non-compliance with provisions contained in the Public Procurement Act and its accompanying Regulations.

DECISION OF THE REVIEW PANEL

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

The Application for Review lodged with the Review Panel on 4 March 2021 against the Respondents is dismissed in terms of Section 60 (a) of the Public Procurement Act, 2015 (Act No. 15 of 2015).



The image shows a handwritten signature on the left, which is partially obscured by a large, circular official stamp. The stamp contains the following text: "REPUBLIC OF NAMIBIA" at the top, "Public Procurement Review Panel" in the center, "Chairperson" below that, and "MINISTRY OF FINANCE" at the bottom. A diagonal line is drawn across the signature and the stamp.

Mr. Kenandei Tjivikua
CHAIRPERSON: REVIEW PANEL (i.r.o. this matter)