



**REPUBLIC OF NAMIBIA**  
**MINISTRY OF FINANCE**

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**PUBLIC PROCUREMENT REVIEW PANEL**

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**IN THE PUBLIC PROCUREMENT REVIEW**  
**HELD ON 01 APRIL 2021**  
**IN THE MATTER BETWEEN**

**ERONGO QUARRY AND CIVIL WORKS**

**APPLICANT**

**AND**

**ROADS AUTHORITY**

**RESPONDENT**

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

BID NO: W/ONB/RA-14/2019: SALT MAINTENANCE IN THE OTJIWARONGO  
REGION

Present: Michael Gaweseb (Chairperson) with Tulimeyo Kaapanda, Selma-Penna  
Utonih, Mekondjo Nghipandulwa and Kenandei Tjivikua concurring.

Heard : 01 April 2021

Decided : 01 April 2021

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REVIEW PANEL ORDER

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Having heard Mr. Gilroy Kasper on behalf of the Applicant, Mr. Wilfried Brock Respondent (Roads Authority) and other interested parties who attended the hearing. Having read the Application for Review and other documents filed as part of the record, the Review Panel subsequently find the following:

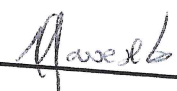
1. The Applicant stated that they were disqualified because they did not provide number of work experience as prime contractor at least one road project over a period of 2 years in accordance with Instruction to Bidders 6.3 (b).
2. In addition, the Applicant stated that they were not subjected to financial evaluation as they were disqualified for not being responsive on technical experience as well as the alleged failure to submit prove of ownership of equipment in accordance with ITB 6.3 (c).
3. The Respondent submitted that it did not violate Section 55 of the Public Procurement Act, Act 15 of 2015 (hereinafter referred to as the "Public Procurement Act") as there was criteria given under ITB 33.4 on how financial responsiveness of the bidder was going to be determined.  
*ITB 33.4 stipulates that "bidders whose tender amounts vary by more than 15% up and 10% down from the respective standard "benchmark" tender amount calculated for this contract shall be deemed to be non-compliant and shall be rejected".*

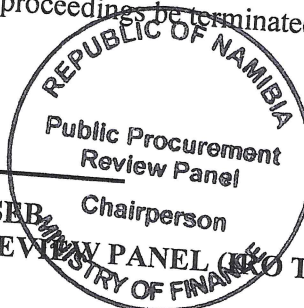
**Finding of the Review Panel:**

4. That the 1<sup>st</sup> Respondent violated Regulation 7 (2) of the Procurement Act when its Bid Evaluation Committee failed to commence with the bid examination and evaluation process within 5 days after the opening of bids. The Respondent admitted this fact and advanced the reason being delays and predicaments brought about by COVID-19 pandemic, including related lockdowns. Section 4.2 of the Act makes provision for a Public Entity to seek exemption rights from complying with certain provisions of the Act however, the 1<sup>st</sup> Respondent has failed to seek an exemption.
5. That 1<sup>st</sup> Respondent failed to comply with Section 52 (9) of the Act when they failed to evaluate every bid according to the criteria and methodology set out in the bidding documents. The Public Entity eliminated bidders for not having shown proof of ownership, although it was not a requirement or criteria communicated or indicated to the bidders in the bidding document.

**In the result the Review Panel make the following order:**

1. In the premise and in accordance with Section 60(f) the Review Panel order that the procurement proceedings be terminated and start afresh.

  
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**MICHAEL GAWESEB**  
**CHAIRPERSON: REVIEW PANEL (FOR THIS MATTER)**

  
REPUBLIC OF NAMIBIA  
Public Procurement  
Review Panel  
Chairperson  
MINISTRY OF FINANCE