



**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 23 NOVEMBER 2020**

**IN THE MATTER BETWEEN**

**FRANKFORT INVESTMENTS CLOSE CORPORATION      APPLICANT**

**AND**

**MUNICIPALITY OF SWAKOPMUND      FIRST RESPONDENT**

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

**BID NO: G/ONB/SM-002/2020: SUPPLY AND DELIVERY OF BLACK/CHARCOAL  
AND ORANGE REFUSE CONTAINERS MGB 240L**

**Coram:** Doné Brinkman (Chairperson), with Kenandei Tjivikua, Michael  
Gaweseb, Hellen Amupolo and Paulina Kandali Iyambo concurring.

**Heard:** 23 November 2020

**Decided:** 23 November 2020

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**ORDER**

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Having heard Mr. Desmond Frankfort for the Applicant and Alfeus Benjamin for the First Respondent, other interested Parties in attendance and others who attended the virtual hearing proceedings.

Having read the Application for Review and other documents filed as part of the record, the Review Panel subsequently found the following:

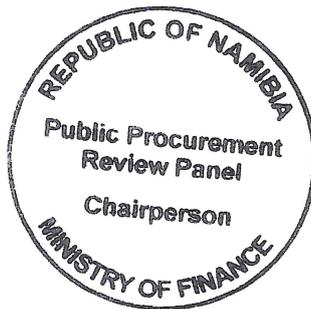
- a. The First Respondent during its procurement process violated Regulation 7(3) of the Public Procurement Regulations: Public Procurement Act 2015, when a re-evaluation took place outside the prescribed period of 14 days;
- b. The First Respondent had no scoring matrix in place which informed the evaluation process; and
- c. The First Respondent misconstrued Section 55(4)(b) with subsection (8) of the Public Procurement Act, Act 15 of 2015 when it sent the Notification of Selection for award along with the Executive Summary.

**AS A RESULT, THE REVIEW PANEL MAKES THE FOLLOWING ORDER:**

1. Notwithstanding the anomalies characterised above, which occurred during the procurement process that led to the award of the bid concerned herein, the Review Panel on the strength of the High Court's ruling in the case of *The Central Procurement Board v Nangolo N.O and Others [2018] NAHCMD 357*, is unable to set aside or reverse the decision of the Swakopmund Municipality as the decision of the Municipality had the effect of bringing a procurement contract into force. Based on the aforesaid judgment, the Review Panel did not have the power in terms of

Section 60 of the Public Procurement Act, Act 15 of 2015, to set aside the decision and such decision should therefore stand.

2. In the premise, the Review Panel in the instant matter could therefore not set aside the decision of the First Respondent, awarding the bid to Morgan and Queen Medical Supplies, and therefore resolved to in terms of Section 60(a) to dismiss the application.
3. The effective date of this Order is from 23 November 2020.



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**DONÉ BRINKMAN**  
**CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)**