



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW
HELD ON 01 SEPTEMBER 2020**

IN THE MATTER BETWEEN

NBT QUALITY JV KASHIKUDI INVESTMENTS

APPLICANT

AND

SWAKOPMUND MUNICIPALITY

1st RESPONDENT

ELITE CONSTRUCTION

2nd RESPONDENT

OCB BUILDERS CC

3rd RESPONDENT

CROWN BLOCKS TRADING CC

4th RESPONDENT

FUNDAMENTAL TRADING ENTERPRISES

5th RESPONDENT

SHALOM PARK JV OWERA CONSTRUCTION

6th RESPONDENT

BLACK RIVER JV SANLI CONSTRUCTION

7th RESPONDENT

MANGESH JV NEW ERA INVESTMENT

8th RESPONDENT

CHNN JOINT VENTURE

9th RESPONDENT

PETMER JV EHANGANO CONSTRUCTION

10th RESPONDENT

MAPERES INVESTMENT CC
RIMAR CONSTRUCTION
ETN TECHNICAL JV JAMES AND YOUNG

11th RESPONDENT
12th RESPONDEDNT
13th 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-004/2019/ CONSTRUCTION OF THE SME INDUSTRIAL
PARK ON ERF 4866.

Present: Hellen Amupolo (Chairperson) Ono – Robby Nangolo, Paulina Kandali
Iyambo, Petrina Johannes and Fillemon Wise Immanuel.

Heard: 01 September 2020

Decided: 02 September 2020

REVIEW PANEL ORDER

Having heard Freda Asheelo for the Applicant, Mr. Piet Burger for the 1st Respondent, Mr. Phillip Barnard for the 2nd Respondent well as other joined interested parties, respectively, and subsequently having read the application for review in terms of Section 59(1) read with Regulation 42 of the Public Procurement Act (Act. No. 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; and*
2. *Further that there was non-compliance with Regulation 7(3) by the 1st Respondent as the process of examination and evaluation of bids exceeded the timeframe prescribed therein.*

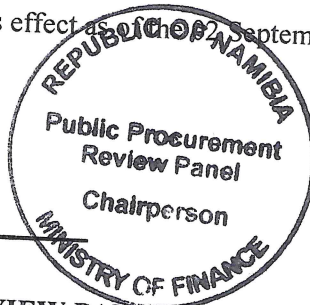
Notwithstanding the foresaid observations, the Review Panel found that the Application for Review herein relates to a bid that has exceeded its bid validity period in terms of Section 49(1) and the 1st Respondent has failed to extend the period by procuring an agreement of the bidders. Regard had hereto;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

Placing reliance on the case of the *Law Society of Namibia v Namandje*, wherein the presiding judge held under paragraph 45 that “*having found that the application was not properly and lawfully authorised there is nothing further for me to decide*”, the Review Panel equally held that there is nothing before it to decide when the Application for Review concerns a bid that is non-existent by operation of law.

Further, arguments for and against the cancellation and/or regarding the totality of the manner in which the 1st Respondent handled the bidding process, however enticing to embark upon, are not relevant anymore, nor necessary to decide.

As a result, the Review Panel hereby makes the following order:

1. That the BID NO: W/ONB/SM-004/2019 - Construction of the SME Industrial Park on ERF 8466, Swakopmund, is non-existent by operation of law, so does any decision that was made outside the bid validity period, in the absence of any extension.
2. As dawn comes after night, so does the result follows the action, the Review Application is dismissed in terms of Section 60 (a) of the Public Procurement Act (Act 15 of 2015) and the Public Entity is ordered to start the procurement process afresh.
3. That this order takes effect as of 02 September 2020.



**HELLEN AMUPOLO
CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)**