



**REPUBLIC OF NAMIBIA**

**MINISTRY OF FINANCE AND PUBLIC ENTERPRISES**

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**PUBLIC PROCUREMENT REVIEW PANEL**

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING**

**HELD ON 23 APRIL 2025**

**IN THE MATTER BETWEEN**

**AFRIMED INVESTMENTS CC**

**APPLICANT**

**AND**

**NAMIBIA INSTITUTE OF PATHOLOGY LTD**

**1<sup>ST</sup> RESPONDENT**

**THE SCIENTIFIC GROUP**

**2<sup>ND</sup> RESPONDENT**

**NAMIVIA MEDPLUS SUPPLIES CC**

**3<sup>RD</sup> RESPONDENT**

**NOVO MEDICAL SUPPLIES**

**4<sup>TH</sup> RESPONDENT**

**UBUNTU MEDICAL JV SINTECH INVESTMENT CC**

**5<sup>TH</sup> RESPONDENT**

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

*BID NO: G/OIB/NIP-07/2024: Outright buy or lease of one (1) Osmometer including service and maintenance for Core Lab-NRL for a period of five (5) years*

**Present:** Michael Gaweseb (Chairperson), Hellen Amupolo, Selma-Penna Utonih, Ehrenfried Honga and Gilbert Habimana concurring.

**Heard:** 23 April 2025

**Decided:** 23 April 2025

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**REVIEW PANEL ORDER**

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**1. Introduction**

1.1 The Review Panel was constituted in terms of Section 58 (1) of the Public Procurement Act, Act 15 of 2015, as amended (hereinafter referred to as the “Act”) to adjudicate on the Application for Review for bid number **G/OIB/NIP-07/2024**, for the Outright buy or lease of one (1) Osmometer including service and maintenance for Core Lab-NRL for a period of five (5) years

1.2 Having heard **Mr. Ndeli Ndaitwah**, for the Applicant, and other interested parties who were joint in terms of sub-regulation 42(5)(a) of the Public Procurement Regulations, 2017 (hereinafter referred to as “the Regulations”) to the Public Procurement Act, 2015 (Act No. 15 of 2015) (hereinafter referred to as “the Act”) and;

1.3 The Review Panel having read the application for review made in terms of Section 59 of the Act, read with Regulation 42 of the Regulations, having read the documents and submissions made in the application and having heard the Parties on the **23<sup>rd</sup> April 2025**, the Review Panel made findings and orders as provided herein below.

**2. Grounds for Review as Contained in the Applications for Review**

2.1 The Applicant stated in its application for review that on the 13<sup>th</sup> of March 2025, the 1<sup>st</sup> Respondent issued its Notice of selection for procurement award and Executive summary of bid evaluation report wherein, the Applicant’s bid was found to be responsive however, a foreign entity known as The Scientific Group, the 2<sup>nd</sup> Respondent, was selected for procurement award in respect of the bid in total amount of N\$383,034.14, which amount is broken down as follows:

Year 1: N\$252,791.00 (Total amount for the instrument and consumables, excluding VAT).

Year 2: N\$30,217.95 (total amount for consumables, excluding VAT)

Year 3: N\$31,728.85 (total amount for consumables, excluding VAT).

Year 4: N\$33,315.29 (total amount for consumables excluding VAT).

Year 5: N\$34,981.05 (total amount for consumables excluding VAT)

2.2 On 18 March 2025 the Applicant filed its reconsideration in terms of which the Applicant correctly highlighted that, *inter alia* : the bid was not and should have not been open to international bidders by virtue of section 30 of the Act reads as follows:

“Open International bidding

30. Open advertised international bidding is used if-

- (a) The estimated value of the procurement exceeds the prescribed threshold
- (b) The goods or services are not available under competitive price and other conditions from more than one supplier in Namibia; or
- (c) there is no responsive to open national bidding and the goods or services are obtained from international bidders.

2.3 On the 26<sup>th</sup> March 2025, the 1<sup>st</sup> Respondent replied to the Applicant’s reconsideration. Its decision to award the bid to the 2<sup>nd</sup> Respondent on the basis that, *inter alia*:

“The NIP did not receive more than one responsive bid from a Namibian after every bid was evaluated according to the criteria and methodology set out in the bidding documents and further evaluating the cost of each bid compared with the other bids to determine the most economically advantageous bid. The awarded bid was both economically advantageous and in terms of the technical specifications more competitive than the other bids.”

### 3. POINTS *IN LIMINE*

3.1 As a matter of procedure, and before the merits of the matter could be heard, the Chairperson requested the parties to raise any points *in limine* they might have before the merits of the matter are heard. the Chairperson further wanted to know whether the Applicant served the Respondent with its application for review and if the Respondent was served, when was it served. In response, the Applicant informed the Review Panel that it served the Respondent with its review application on the 3<sup>rd</sup> of April 2025 and further provided the proof of service to the Review Panel. The Respondent confirmed being served with the review application on the 3<sup>rd</sup> of April as alluded by the Applicant and informed the Review Panel that it filed its Replying affidavit on 9<sup>th</sup> April 2025 (on the 4<sup>th</sup> day after it was served with the application for review and confirmed that its Replying affidavit is late and that its contrary to Regulation 42 (4) of the Public Procurement Regulations.

3.1 The Review Panel decided and informed the Parties that the 1<sup>st</sup> Respondent forfeited its right to participate in the review proceedings as it failed to comply with Regulation 42 (4) of the Public Procurement Regulations.

#### **4. APPLICANT'S SUBMISSION AT THE REVIEW PANEL HEARING**

- 4.1 The Applicant submitted that it filed its request for reconsideration with the 1<sup>st</sup> Respondent to which the 1<sup>st</sup> Respondent replied that it maintained its decision to award the bid to the 2<sup>nd</sup> Respondent on the basis the 1<sup>st</sup> Respondent did not receive more than one responsive bid from a Namibian bidder after every bid was evaluated to according to the criteria and methodology set out in the bidding documents.
- 4.2 In maintain its position, the 1<sup>st</sup> Respondent also referred to the Notice of issuance of Code of Good Practice on Preferences referred to in section 71 and 72 of the Public Procurement Act.
- 4.3 Section 30 of the Act stipulates the three (3) bases upon which Open International Bidding may be used by the Board or a public entity as a method of procurement. The Applicant further submits that this bid does not fall within any of the three (3) bases referred to under section 30 of the Act.
- 4.4 The Applicant states that section 30 (a) of the Act, the first bases upon which Open International Bidding can be used is in instances where the procurement exceeds the prescribed thresholds, which are specified under Annexure 2 of the Regulations wherein Open International Bidding can be applied as follows:
- 4.4.1 in respect of Goods, estimated value of procurement exceeds N\$25,000,000.00 and in respect of Works, estimated value of procurement exceeds N\$40,000,000.00.
- 4.5 Section 30 (b) of the Act, the second bases upon which the Open International Bidding may be used is when the goods or services are not available under competitive price and other conditions from more than one supplier in Namibia.
- 4.6 Further the Applicant submitted that the 1<sup>st</sup> Respondent's decision to select the 2<sup>nd</sup> Respondent's bid for procurement award for the bid stands to be set aside because the 1<sup>st</sup> Respondent acted contrary to the Act when it invited the Bid on Open International Bidding.

#### **5. Findings by the Review Panel**

- 5.1 The Review Panel found that the public entity acted contrary to section 30 of the Public Procurement Act in that it used the Open International method when goods and services are available under competitive price and other conditions from more than one supplier in Namibia.
- 5.2 The Secretariat found that the First Respondent acted contrary to Regulation 42 (4) in that it failed to file a Replying affidavit with the Review Panel within two days upon being served with the copy of the review application, to allegations made by the Applicant.

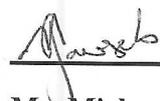
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**6. Decision on the Review Panel**

6.1 That the Notice issued by the 1<sup>st</sup> Respondent and dated 13 March 2025, for the procurement of outright buy or lease of one (1) Osmometer including service and maintenance for Core Lab-NRL for a period of five years, is hereby declared as *ultra vires*, unlawful and therefore set aside in terms of Section 60(c) of the Public Procurement Act.

6.2 Further that, in terms of Section 60 (f) of the Public Procurement Act, the procurement proceedings be terminated and start afresh

6.2 The Public Entity shall provide proof of implementation of this Order to the Procurement Policy Unit within thirty (30) days from the date of receiving this Order.



**Mr. Michael Gawese**  
**CHAIRPERSON: REVIEW PANEL (AS FOR THIS REVIEW)**

