



REPUBLIC OF NAMIBIA

PUBLIC PROCUREMENT REVIEW PANEL

**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 21 AUGUST 2025**

IN THE MATTER OF

GRAFAN TECHNOLOGIES SOLUTION CC

APPLICANT

and

TELECOM NAMIBIA LTD

RESPONDENT

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

BID NO: – G/OIB/TN-91/2024 - SUPPLY AND DELIVERY OF CUSTOMER PREMISES EQUIPMENT (CPE) TO TELECOM NAMIBIA FOR A PERIOD OF THREE (3) YEARS

Coram: Brownly Mutrifa (Chairperson) with Gilbert Habimana, Michael Gaweseb, Doné Brinkman and Mekondjo Katunga

Heard: 21 August 2025

Decided: 21 August 2025

REVIEW PANEL ORDER

1. INTRODUCTION

- 1.1 The Review Panel was constituted in terms of section 58 (1) of the Public Procurement Act, 2015, as amended, to hear the application lodged by Grafan Technologies Solution CC, hereinafter referred to as the “Applicant”, against Telecom Namibia Ltd, a public entity, hereinafter referred to as the “Respondent”.
- 1.2 Having heard the parties and having read the application for review lodged in terms of Section 59(1) of the Public Procurement Act, 2015 (Act No.15 of 2015) as amended (hereinafter referred to as “the Act”), read with Regulation 42 of the Public Procurement Regulations (hereinafter referred to as the “Regulations”), and having read other relevant documents filed as part of the record, the Review Panel made the following findings and subsequent order in respect of the matter.

2. BACKGROUND

- 2.1 This review application arises from Bid No: G/OIB/TN-91/2024 for the supply and delivery of Customer Premises Equipment (CPE) to Telecom Namibia Ltd for a period of three years, valued at approximately N\$48,319,200.00.
- 2.2 The Applicant was selected for award and duly accepted the same in September 2024. No reconsideration applications were lodged during the standstill period. Following the award, the First Respondent initiated a technical testing process of the Applicant’s proposed CPE, aimed at confirming compatibility with its network.
- 2.3 By letter dated 16 July 2025, the Respondent notified the Applicant of its intention to withdraw the award, citing Applicant’s non-compliance to CPE specifications laid down in the bidding documents. On 06 August 2025, the Applicant lodged this review application under section 59 of the Public Procurement Act, 2015, as amended.

3. POINTS *IN LIMINE*

At the commencement of proceedings, the following preliminary issues were raised by the 1st Respondent:

- 3.1 Non-joinder: The 1st Respondent argued that other bidders who participated in the tender process were not served with the Review Application as they have direct and substantial interest in the outcome. Any relief granted in favour of the Applicant would prejudice their rights and the integrity of the procurement process.
- 3.2 Res judicata / Lis pendens: The 1st Respondent submitted that the Applicant had already instituted proceedings in the High Court, seeking to enforce the award. That matter is pending, with mediation scheduled for 29 August 2025. The Applicant cannot litigate in parallel before two forums on the same subject matter.
- 3.3 Prematurity: The 1st Respondent emphasised that no final cancellation had occurred; only an “intention to withdraw” was communicated on 16 July 2025. Until a definitive cancellation is issued, there is no reviewable decision or action under section 59 of the Public Procurement Act, 2015, as amended.
- 3.4 Lateness: The 1st Respondent contended that the 16 July 2025 letter was the operative decision. The review application lodged on 06 August 2025 was filed well outside the seven-day period prescribed under Section 59 (1) and Regulation 42(1).

4. RESPONSE BY THE APPLICANT ON POINTS *IN LIMINE*

- 4.1 On Non-joinder, the Applicant contended that the dispute is strictly between itself and the 1st Respondent. The award was already made and accepted, leading to a binding contract and no reconsideration was sought by other bidders within the standstill period. Other bidders therefore have no direct and substantial interest at this stage.
- 4.2 On Res judicata / Lis pendens, the Applicant distinguished the High Court proceedings as concerning contractual enforcement, while the present application concerns a procurement action, namely, the intention to cancel the award. These are separate causes of action, and the doctrine of res judicata does not apply.
- 4.3 On Prematurity, the Applicant argued that the communication of 16 July 2025 has immediate legal consequences, as it undermines the validity of the award and its contractual rights. The “intention” therefore constitutes a reviewable procurement action. Waiting for a formal cancellation would render the review process nugatory.
- 4.4 On Lateness, the Applicant submitted that the statutory seven-day period only applies to a final “decision or action.” Since only an intention was communicated, the time period had not yet commenced. Alternatively, the matter was still alive when the review was filed, as no final cancellation had been effected.

5. SUBMISSION ON THE MERITS BY THE APPLICANT

The Applicant advanced the following arguments:

- 5.1 That once an award is made and accepted, the procurement process is concluded, and a binding obligation arises. The 1st Respondent's refusal to finalise the contract undermines the integrity of the procurement processes.
- 5.2 The bidding documents did not provide for a post-award testing phase. Subjecting the Applicant's equipment to such testing amounted to an impermissible re-evaluation contrary to Section 52(1). Any issues arising after award are contractual performance matters, not grounds for cancellation.
- 5.3 The Applicant addressed all concerns raised, including the firmware issue, by providing documents from both the supplier and firmware originator confirming compliance. These were disregarded.
- 5.4 The Applicant therefore prayed that the Panel set aside the Respondent's intention to cancel, declare the award binding, and direct the Respondent to finalise the contract.

6. 1st RESPONDENT SUBMISSIONS

- 6.1 The 1st Respondent submission is that clause 12.1 of the ITB, read with the Bid Data Sheet and Chapter 5 of the bidding documents, required verification testing prior to contract conclusion. The testing phase was mandatory and integral to ensuring compatibility of CPE equipment with Telecom Namibia's network and had to be carried out after formation of a contract with the successful bidder, by another ad hoc technical committee, as provided by the bidding document.
- 6.2 The Applicant's devices failed these tests, demonstrating non-compliance with conformance specifications clearly set in chapter V of the bidding document. Proceeding with such equipment would risk network instability, poor service quality, and exposure of customers to unreliable service.
- 6.3 Furthermore, that section 63 of the Public Procurement Act, 2015 as amended empowers a public entity to withdraw an award before contract signature if circumstances change or if continuation is not in the public interest. The failed testing results constituted such changed circumstances.
- 6.4 Therefore, the 16 July 2025 communication was a lawful exercise of the 1st Respondent's discretion under section 63 of the Act. The Respondent prayed for dismissal of the review application.

7. FINDINGS OF THE REVIEW PANEL

Upon careful consideration of the oral submissions, affidavits, and the record, the Review Panel makes the following findings:

- 7.1 On Non-joinder, the Review Panel considered the 1st Respondent's contention that other bidders should have been joined, given that they may have an interest in the outcome of the dispute. While it is correct that a successful review could potentially impact the interests of other bidders, the Review Panel finds that the present dispute is strictly between the Applicant and the 1st Respondent. The award had already been made to the Applicant and accepted, and no reconsideration applications were lodged by any of the other bidders within the standstill period. Their rights have therefore preserved, and they are not directly or substantially affected by the relief sought at this stage. The objection on non-joinder is accordingly dismissed.
- 7.2 On Res judicata / Lis pendens, the Review Panel considered the 1st Respondent's reliance on the pending High Court matter as grounds for lis pendens or res judicata. It is noted that the Applicant approached the High Court to seek enforcement of the award as a contractual obligation, with mediation scheduled for 29 August 2025. However, the present proceedings are brought under section 59 of the Public Procurement Act, which concern a procurement action, specifically, the Respondent's communication of its intention to withdraw the award. The causes of action, relief sought, and legal frameworks are therefore distinct. The pendency of the High Court matter does not bar the Applicant from pursuing a statutory procurement review. The objection on res judicata is accordingly dismissed.
- 7.3 On Lateness, the Review Panel notes that section 59 (1) of the Act, read with Regulation 42(1), requires a review application to be filed within seven (7) days of the impugned decision or action. The 1st Respondent argued that the operative decision was the letter of 16 July 2025, while the Applicant maintains that it was merely an intention to cancel and thus not a "decision" for purposes of triggering the limitation period. If the 1st Respondent's view is correct, then the application lodged on 06 August 2025 was out of time. However, if the Applicant's interpretation is accepted, then the time bar has not yet run. The resolution of this objection is therefore tied to whether the communication of 16 July 2025 constitutes a final decision. For this reason, the Review Panel considers lateness together with prematurity.
- 7.4 On Prematurity, the majority (3 Members) accepts the 1st Respondent's submission that the 16 July 2025 letter was not a final cancellation, but only an intention to withdraw. This view is supported by Respondent's request for Applicant's submission as to why the award cannot be cancelled based on Applicant's failure to comply with CPE specifications that constitute vital terms of the formed contract. Applicant also has responded to the Respondent's request and no cancellation had been made yet at the day of these hearing proceedings. Under section 63 of the Act, a public entity retains discretion to withdraw an award prior to contract signature where circumstances change, or continuation of the process is not in the public interest. In this case, that discretion had not yet been definitively exercised. An "intention" is not a conclusive act but a step in an internal process. As such, it does not qualify as a "decision or action" under Section 59 capable of review. Consequently, the application is premature and falls

outside the Review Panel's jurisdiction.

7.5 The minority (2 Members) takes the view that the 1st Respondent's conduct, including the indefinite delay in contract signature and issuance of an "intention to cancel" after award and acceptance, has immediate and practical legal consequences for the Applicant. It undermines the certainty and integrity of the procurement system and prejudices the Applicant's right to contract. For that reason, communication should be treated as a reviewable action under section 59 of the Act.

8. DECISIONS OF THE REVIEW PANEL

Having considered the above, the Review Panel makes the following Order:

8.1 That in terms of section 60 (a) of the Public Procurement Act, 2015 as amended, the review application is dismissed as premature. The 1st Respondent has not taken a final decision to cancel the award, and therefore there is no reviewable "decision or action" under section 59 of the Act.

8.2 The effective date of this Order is 21 August 2025.

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Brownny Mutrifa
Chairperson (for this matter)

