

REPUBLIC OF NAMIBIA



PUBLIC PROCUREMENT REVIEW PANEL

Case number: RA/12-11/2025

ORDER

In the matter between:

JIANGSU TONGGUANG OPTICAL FIBRE CO. LTD APPLICANT

and

NAMIBIA POWER CORPORATION (PTY) LTD FIRST RESPONDENT

JIANGSU ZHONGTIAN TECHNOLOGY LIMITED SECOND RESPONDENT

AND OTHERS 3RD TO 17TH RESPONDENTS

Citation: *Jiangsu Tongguang Optical Fibre Co. Ltd v Namibia Power Corporation (Pty) Ltd and others*

Coram: Titus Kanyanda (Chairperson), Martins Kambulu, Hendricus Beukes, Martha Mwatile and Effaishe Nghiidipaa.

Heard: 27 January 2026

Decided: 27 January 2026

**IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE
PUBLIC PROCUREMENT ACT, ACT NO 15 OF 2015, AS AMENDED**

*[G/OIB/NPWR-01/2026-SUPPLY AND DELIVERY OF OPTICAL FIBRE GROUND
WIRE (OPGW)- AUAS-KOKERBOOM II TRANSMISSION LINE]*

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, hereinafter referred to as the "Applicant", against the Namibia Power Corporation, a public entity, hereinafter referred to as the "1st 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.
- 1.3 At the hearing of the application, the Applicant was represented by Mr. Olsen Kahiriri from Kahiriri Consultancy representing the Applicant. The Respondent was represented by Mr. Victor Gabriel.
- 1.4 Other interested parties were joined to the proceedings in terms of Regulation 42(5) of the Public Procurement Regulations (hereinafter referred to as the 'Regulations').
- 1.5 Having regard to the arguments and documents filed by the respective parties as part of the record, the Review Panel proceeded to make the following findings and order set out hereunder.

2. POINTS *IN LIMINE*

- 2.1 As a matter of procedure, and prior to the consideration of the merits, the Review Panel invited the Parties to raise any points in limine they wished to advance.
- 2.2 In response, the Applicant raised a point *in limine* that the application was unopposed due to the 1st Respondent's failure to file a response within the prescribed two-day period. The Applicant submitted that the application was served on the 1st Respondent on 30 December 2025 and that the 1st Respondent failed to comply with Regulation 42(4). It was further contended that the Review Panel lacks the power to condone non-compliance with the prescribed timeframes and that, as a result, the 1st Respondent forfeited its right to participate in the proceedings.
- 2.3 The Applicant further submitted that the 1st Respondent had served it with a letter indicating the withdrawal of the Notice of Selection of Award. On this basis, the Applicant argued that the 1st Respondent had become *functus officio* and could not lawfully reverse that decision. The Applicant also took issue with the late replying affidavit, which was deposed to by one Benedictus Mingeli, submitting that had he indeed been the duly appointed Acting Managing Director at the relevant time, he would likewise have been the signatory to the purported withdrawal letter.

The 1st Respondent response to the *point in limine*

- 2.4 In response, the 1st Respondent submitted that it received the application directly from the Applicant on 30 December 2025. The application was, however, officially received on 6 January 2026 from the Review Panel Secretariat. The 1st Respondent emphasized that the normal procedure is for the public entity to receive the application from the Review Panel Secretariat together with a covering letter specifying the list of documents to be submitted to the Review Panel, including the replying affidavit. On this basis, the 1st Respondent submitted that its replying affidavit was not filed out of time.

2.5 On the issue of signatures, the 1st Respondent further stated that the Act permits the Accounting Officer to delegate any person to sign correspondence, except for procurement contracts and the signatory of the letter in question was the duly appointed acting managing Director and the Accounting Officer of the 1st Respondent.

Ruling by the Review Panel on the *point in limine*

Having considered the points raised, and the submissions by the parties the Review Panel determination is as follows:

2.6 The procedure for lodging an application for review, effecting service, and filing replying affidavits is clearly and comprehensively set out in Regulation 42. There can therefore be no ambiguity or uncertainty regarding the manner and timelines within which a replying affidavit must be filed before the Review Panel.

2.7 The Review Panel accordingly ruled that the replying affidavit was non-compliant with Regulation 42 (4) and could not be admitted into the record. The matter therefore proceeded on an unopposed basis. Notwithstanding this finding, and in the interests of fairness and clarity, the Review Panel invoked Regulation 44 to seek clarification from the 1st Respondent.

3. SUBMISSIONS BY THE APPLICANT

3.1 The Applicant submitted that the 1st Respondent erroneously concluded that the successful bidder complied with the bid requirements. In terms of ITB 23.1, bidders were required to submit one original hard-copy bid, and in the event of any discrepancy between the original and any copies, the original hard-copy would prevail. The bidding documents did not provide for electronic submission of bids. Accordingly, where documentation was requested in electronic format for evaluation purposes, the original hard-copy submission remained the governing document.

- 3.2 The Applicant contended that the 1st Respondent alleged that the successful bidder submitted a hard-copy PLS-CADD wire file which was accepted by the Bid Evaluation Committee. The Applicant disputed this position, submitting that ITB 36.3(a) expressly required the submission of a PLS-CADD wire file in electronic format as a mandatory technical evaluation criterion. The successful bidder's failure to submit the required electronic file constituted a material omission, rendering the bid non-responsive in respect of this mandatory requirement.
- 3.3 In support of this submission, the Applicant explained that PLS-CADD is a specialized computer-aided design software used for transmission line engineering, and that a PLS-CADD wire file consists of digital input data defining, inter alia, conductor properties, ground wire specifications, and the mechanical, electrical, and physical parameters of the transmission line. The absence of such an electronic file therefore deprived the evaluators of the ability to properly assess compliance with the technical requirements.
- 3.4 The Applicant further submitted that it is aggrieved by the decision and conduct of the 1st Respondent in awarding the bid to a bidder who failed to comply with the mandatory requirements of the Instructions to Bidders and the Technical Evaluation Criteria under ITB 36.3(a). Consequently, the Applicant submitted an application for reconsideration on 19 December 2025 in terms of section 55(4A) of the Act, on the ground that the successful bidder failed to submit the mandatory PLS-CADD wire file in electronic format.
- 3.5 The Applicant stated that this review application followed the 1st Respondent's formal response dated 24 December 2025, in which the 1st Respondent reaffirmed its decision to classify the Applicant's bid as non-responsive. The Applicant further questioned the credibility of the reconsideration process, noting that the 1st Respondent alleged that the BEC Members were out of office as of 23 December 2025, yet claimed that a final decision on the Applicant's reconsideration application was nonetheless taken. The Applicant queried when, and by whom, the reconsideration decision was in fact made.

3.6 On the basis of the above, the Applicant sought an order reviewing, correcting, and setting aside the 1st Respondent's decision to select and/or recommend the 4th Respondent for award and contended that the successful bidder was incorrectly deemed the lowest evaluated substantially responsive bidder despite failing to meet all mandatory qualifying criteria.

4. CLARIFICATIONS BY THE 1ST RESPONDENT

4.1 The 1st Respondent clarified that the Notice of Selection of Award and the Executive Summary of the Bid Evaluation Report, both issued on 15 December 2025, were withdrawn on 08 January 2026. This decision followed the receipt of several requests for reconsideration from bidders, including the Applicant, and the subsequent identification of a number of errors in the bid evaluation process which required further examination.

4.2 The 1st Respondent indicated that the withdrawal was effected to allow the Bid Evaluation Committee (BEC) to reconvene and conduct a re-evaluation of the bids, and that the procurement process therefore remains ongoing.

4.3 The 1st Respondent further clarified that no letter of award was issued, and no procurement contract was concluded pursuant to the withdrawn Notice of Selection of Award. Although the withdrawal occurred after the review application had been launched, it was effected prior to the hearing of the matter.

5. FINDINGS OF THE REVIEW PANEL

Having considered the submissions of the parties, the Review Panel findings are as follows:

5.1 The Review Panel finds that, in terms of ITB 36.3 (a), bidders were required to submit a PLS-CADD Wire file for the proposed conductor in electronic format as part of their respective bids. The 1st Respondent confirmed that indeed the selected bidder did not submit such a softcopy file.

- 5.2 The Review Panel finds that the 1st Respondent departed from the evaluation criteria set out in the bidding documents and introduced new evaluation criteria during the evaluation and examination of the bids, thereby acting contrary to section 52(9) of the Public Procurement Act.
- 5.3 The 1st Respondent conceded that there were a "number of errors" in the bid evaluation process which required further examination.
- 5.4 The Review Panel finds that the withdrawal letter relating to the Notice of Selection of Award is null and void in law, in that the 1st Respondent impermissibly reviewed and withdrew its own decision while review proceedings were pending.

ORDER

In the result, the following order is made:

1. The Notice of Selection of Award issued by the public entity is hereby set aside in its entirety, in terms of section 60(c) of the Act.
2. The public entity is directed to re-evaluate all bids, strictly in accordance with section 52(9) of the Act, including ITB 36.3 (a), among others ITBs as set in the bidding documents .
3. The letter issued by the 1st Respondent purporting to withdraw the Notice of Selection of Award is hereby declared *null* and *void* in law and of no force or effect.
4. This Order is effective from 22 January 2026 and to be implemented the moment it is received by the parties.

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