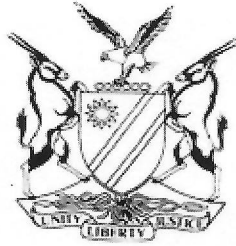


REPUBLIC OF NAMIBIA



PUBLIC PROCUREMENT REVIEW PANEL

Case number: RA/02-03/2026

ORDER

In the matter between:

JIANGSU TONGGUANG OPTICAL FIBRE CABLE CO. LTD APPLICANT

and

NAMIBIA POWER CORPORATION (PTY) LTD	1ST RESPONDENT
THE CHIEF EXECUTIVE OFFICER	2ND RESPONDENT
THE CHAIRPERSON OF THE BEC	3RD RESPONDENT
OTHER INTERESTED PARTIES	4TH-17TH RESPONDENTS

Citation: *Jiangsu Tongguang Optical Fiber Cable Co. Ltd v Namibia Power Corporation (Pty) LTD and Others (RA/02-03/2026)*

Coram: Titus Kanyanda (Chairperson), Martha Mwatile, Ehrenfried Honga, Lucas Siremo and Hilke Alberto.

Heard: **12 March 2026**

Decided: **12 March 2026**

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

*[BID NUMBER: 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 application lodged by Jiangsu Tongguang Optical Fibre Cable CO. Ltd (hereinafter referred to as the “Applicant”), against Namibia Power Corporation (Pty) Ltd (hereinafter referred to as the “1st Respondent”).
- 1.2 Having joined the Applicant, the 1st Respondent and others in terms of Regulation 42(5)(a) of the Public Procurement Regulations (hereinafter referred to as the “Regulations”) of the Public Procurement Act No. 15 of 2015 as amended (hereinafter referred to as the “Act”); and
- 1.3 Having read the application for review and other documents filed as part of the record, the Review Panel made the following findings and subsequent order hereunder towards the end.

2. POINT IN LIMINE

Point in limine raised by the Applicant

- 2.1 At the commencement of the hearing, the Review Panel sought to establish whether it had jurisdiction to entertain the review application, particularly with regard to the status of the bid validity period of the procurement process forming the subject of the review. This was in consideration that the same point has been raised in the Applicant’s papers before the Review Panel.
- 2.2 In response to the Panel’s enquiry, the 1st Respondent confirmed that the bid validity period expired on 27 February 2026.

3. Submissions by the Applicant on this point

3.1 The Applicant submitted that prior to the expiry of the bid validity period, it had approached the 1st Respondent requesting that the validity of its bid be extended, thereby indicating its willingness to keep its bid valid beyond the stipulated validity period.

3.2 The Applicant argued that, in principle, a bidder who expresses its willingness to extend the validity of its bid should not be prejudiced where it has demonstrated an intention to keep its bid open.

3.3 The Applicant further submitted that there had been numerous correspondences between the parties concerning the extension of the bid validity period. According to the Applicant, the conduct of the 1st Respondent suggested an intention to allow the bid validity period to lapse, which the Applicant characterized as frivolous and vexatious conduct aimed at cancelling or nullifying the procurement process.

3.4 The Applicant also argued that at the time the review application was lodged, the bid validity period had not yet expired, and that the application before the Review Panel was not directed at the bid validity itself, but rather at the decision of the 1st Respondent to cancel the procurement process.

3.5 The Applicant further contended that the Act does not expressly prescribe which party must request the extension of a bid validity period and therefore argued that its request to extend the validity of its bid should have been considered by the 1st Respondent.

4. Submissions by the 1st Respondent

4.1 The 1st Respondent confirmed that the bid validity period had indeed expired on 27 February 2026. However, the 1st Respondent took issue with what it described as the Applicant's recurring accusations that it had acted in bad faith in relation to the procurement process. The 1st Respondent denied these allegations and submitted that the procurement process had been conducted in accordance with the applicable procurement framework.

4.2 The 1st Respondent submitted that it does not dispute the submission by the Applicant on its request for its bid extension and that its non-response to such a request could have been interpreted as no objection.

4.3 The 1st Respondent further pleaded that the Review Panel should proceed to consider the matter on its merits, so that it could demonstrate the basis upon which the Applicant's bid was evaluated and found to be non-responsive during the evaluation process.

5. FINDINGS OF THE REVIEW PANEL

Having carefully reviewed the application, documentary evidence and oral submission by the parties, the Review Panel makes the following findings:

5.1 It is not disputed and is common cause that the bid validity period has expired and that the bid has been cancelled as things stand. Further, it is common cause that once the bid validity period expires, by operation of law, the procurement process including the offers (bids) ceases to be valid or exist.

5.2 While the Applicant might have lodged its review application a day or two before bid expiry, entertaining the application on its merit would be purely an academic exercise. Even if the Review Panel were hypothetically to grant the relief sought by the Applicant, nothing could revive the expired bid at this stage or permit the 1st Respondent to implement or proceed with the procurement process. The Review Panel has no power to revive an expired bid.

5.3 The Review Panel disagrees with the Applicant's submission that a bid extension may be initiated by a bidder. Section 49 of the Act, read together with the bidding documents, clearly prescribes which party may request an extension and who may grant consent. This process unfortunately cannot operate in reverse. In particular, the bidding documents (ITB Clause 21.2) provide that:

"In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 22, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB Sub-Clause 21.3."

5.4 The above provision was never invoked in this case understandably so, as the bidding process was cancelled prior to its expiry.

5.5 In the circumstances, the Review Panel cannot assume jurisdiction to determine a review application where the bid has expired, as the procurement process has effectively lapsed and no effective relief can be granted.

ORDER

In the result of the above, the following order is made:

1. That in terms of section 60 (a) of the Act, the Review Panel hereby dismiss the review application.
2. The effective date of this Order is 12 March 2026.

Seal

