

MEDIA RELEASE

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HIGH COURT DISMISSES URGENT APPLICATION BY MEDIPARK PHARMACEUTICAL WHOLESALERS (PTY) LTD TO RESTRAIN CPBN FROM PROCEEDING WITH ARV BID

The High Court of Namibia, on 14 December 2020, dismissed an urgent court application, filed under Part A and B, by Medipark Pharmaceutical Wholesalers (PTY) LTD against the Ministry of Health and Social and the CPBN on 9 December 2020. Under Part A, Medipark Pharmaceutical Wholesalers (PTY) LTD petitioned the High Court for an interim interdict restraining the Ministry of Health and Social Services and the CPBN from continuing to implement a decision to procure the supply and delivery of anti-retroviral medicine through open international bidding in accordance with section 30 of the Public Procurement Act (PPA), Act 15 of 2015, pending the outcome of the relief sought under Part B. Open 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 response to open national bidding and the goods or services are obtained from international bidders.

Under Part B of its application Medipark Pharmaceutical Wholesalers (PTY) LTD requested the High Court to review and set aside the decision to procure the ARV medication through open-international bidding. This bid went on the market on 28 September 2020 and closed on 14 December 2020.

In their court papers, Medipark Pharmaceutical Wholesalers (PTY) LTD expanded their request by asking the High Court to urgently interdict CPBN from proceeding with

the bid opening on 14 December 2020 and the subsequent evaluation of the bid in question as planned. Secondly, Medipark Pharmaceutical Wholesalers (PTY) LTD petitioned the High Court to review the decision by the CPBN to procure the ARV medication through open international bidding.

In favour of CPBN, the High Court dismissed the urgent application which sought to restrain the CPBN from proceeding with the bid until the finalisation of the review application. The court found that the urgency was self-created and that Medipark Pharmaceutical Wholesalers (PTY) LTD had enough time from 28 September 2020 to approach the courts but only did so on 14 December 2020. As a result of this ruling by the High Court the CPBN proceeded with the bid opening on 14 December 2020 as required by the Act. In total, CPBN received eighteen (18) bids for this procurement.

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