



**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 26 JANUARY 2024**

**IN THE MATTER BETWEEN**

**WEST TRADING CC JV UNIK CONSTRUCTION ENGINEERING 1<sup>st</sup> APPLICANT  
ADAPTIVE BUILDING LAND CONSTRUCTION CC JV CHINA STATE  
CONSTRUCTION ENGINEERING 2<sup>nd</sup> APPLICANT**

**AND**

**CENTRAL PROCUREMENT BOARD OF NAMIBIA (CPBN) 1<sup>st</sup> RESPONDENT  
& OTHERS**

**IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC PROCUREMENT ACT, 2015 (ACT No. 15 OF 2015) AS AMENDED**

**BID NO: W/RB/CPBN-01/2023 – PROCUREMENT OF CONSTRUCTION OF THE ONDANGWA-OMUTSEGWONIME WATER PIPELINE REPLACEMENT AND ANCILLARY WORK: PHASE 1 (ONDANGWA OSHALI SECTION)**

**Coram:** Brownny Mutrifa (Chairperson), with Donè Brinkman, Hellen Amupolo, Rainer Trede and Paulina Kandali Iyambo.

**Heard:** 26 January 2024

**Decided:** 26 January 2024

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**ORDER**

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**1. INTRODUCTION:**

- 1.1 A hybrid meeting was held, using both physical and virtual modes.
- 1.2 Having heard, **Mr. Reya Karuaihe** for the First Applicant, **Ms. Irene Mukumba** for the Second Applicant, **Ms. Nicola Davids** First Respondent, and other interested parties who were joined in terms of sub-regulation 42(5)(a) of the Public Procurement Regulations (hereinafter referred to as “the Regulations”) to the Public Procurement Act, 2015 (Act No. 15 of 2015) (hereinafter referred to as “the Act”) and;

Having read the application for review and other documents filed as part of the records, the Review Panel made the following findings and subsequent order hereunder towards the end.

**2. POINT IN LIMINE**

- 2.1 . At the commencement of the review proceedings, the Chairperson requested the Parties to raise points in *limine* that they may have before the merits of the matter are heard. Further, the Chairperson interrogated if the two (2) applications are filed on time or whether they are filed prematurely.
- 2.2 The First Applicant informed the Review Panel that the First Respondent’s Replying affidavit was not filed within 2 days and it is contrary to Regulation 42 (4) of the Public

Procurement Regulations. The First Applicant further indicated that the First Respondent should not be heard instead it should only give clarification upon request by the Review Panel.

Further, the First Applicant submitted that it has no information about the purported Exemption issued by the Minister of Finance and Public Enterprises. The First Respondent was supposed to communicate the Exemption to the Parties to avoid this the confusion, hence the First Applicant's application was filed in accordance with section 55 (4B) it therefore, should not be regarded as late.

The Second Respondent (Homefin Properties cc Jv China Jiangxi) submitted that the Second Applicant's application is not properly before the Review Panel because it was not filed in terms of section 55 (4B) of the Public Procurement Act as amended therefore, it should not stand.

The Second Applicant conceded that its Application was filed premature hence it withdrew its application for review.

### **3. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICANT'S APPLICATIONS FOR REVIEW:**

3.1 The First Applicant submitted that it was disqualified on the following basis:

*"The bidder did not receive consent from one of the Civil Engineering graduate as required in criteria 1.5.5.2 of the bidding document."*

3.2 The Applicant submitted that in terms of ITB 12.1 (j) (5) of the bidding documents there were only two requirements specified related to the civil engineering graduates that were required and these are the provision of a curriculum vitae and the provision of signed consent forms.

3.3 the Applicant submitted that the First Respondent did not apply its mind to the fact that served before it because it would have been evident that consent letters that were in compliance with the requirement specified by the bidding documents were duly submitted by the Applicant in respect of the Civil Engineering graduates.

#### **The Second Applicant**

3.4 The Second Applicant submitted that it was disqualified or found to be not responsive for one reason only. And the reason is quoted as follow:

*"the bidder submitted signed consent letters (Form Part F15 for the Curriculum Vitae) (CVs) of the Project Manager, Site Manager, Site Engineer, Earthworks Foreman, Concrete Foreman, Pipe laying Forman, Surveyor, Health and Safety Officer, and a Civil Engineering graduate. However, the bidder did not receive consent from one of the Civil Engineering graduate as required criteria 1.5.5.2 of the bidding document"*.

3.5 the Second Applicant further submitted in relation to the evaluation, it confirms that the applicant have submitted all CVs and signed consent forms in respect of all required

and dedicated personnels, as confirmed by the executive summary and the Bid Evaluation Committee (BEC).

#### 4. FINDINGS OF THE REVIEW PANEL

Having heard the Parties at the Review Panel Hearing and having considered the written submissions of the Parties, the Review Panel made the following findings:

- 4.1 That the Applications are filled prematurely and it is contrary to the Exemption issued by the Minister of Finance and Public Enterprises in terms of section 4 (2) of the Public Procurement Act which reads as follow:

*“I hereby in terms of section 4 (2) of the Act grant CPBN exemption from the application of section 55 (4A) of the Act, in order to allow CPBN to provide a decision on the applications for reconsideration within 14 days after the standstill period as opposed to the 7- day period upon receipt of the reconsideration application required under Section 55 (4A).*

#### 5. DECISIONS OF THE REVIEW PANEL:

Based on the above, the Review Panel orders the following:

- 5.1 That in terms of section 60 (a) of the Public Procurement Act, the Review Panel hereby dismiss the Applications.



**Brownny Mutrifa**

**CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)**

