



**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 APPLICATION HEARING  
HELD ON 12 AUGUST 2024**

**IN THE MATTER BETWEEN**

**PAMO TRADING ENTERPRISES (PTY)LTD**

**1<sup>st</sup> APPLICANT**

*and*

**THE CHAIRPERSON OF CENTRAL PROCUREMENT BOARD  
THE MINISTER OF HEALTH AND SOCIAL SERVICES  
NUTRIFOOD (PTY) LTD**

**1<sup>st</sup> RESPONDENT  
2<sup>nd</sup> RESPONDENT  
3<sup>rd</sup> RESPONDENT**

**IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC PROCUREMENT ACT, 2015, AS AMENDED.**

*BID NO: G/OAB/CPBN-01/2022 – PROCUREMENT FOR THE SUPPLY AND DELIVERY OF MEALS IN ACCORDANCE WITH THE DIETARY NEED OF PATIENTS*

**Coram: Brownny Mutrifa (Chairperson) with Doné Brinkman, Lukas Kudumo Siremo, Ehrenfried Honga and Paulina K. Iyambo**

**Heard: 12 August 2024**

**Decided: 12 August 2024**

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**REVIEW PANEL ORDER**

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**1. INTRODUCTION:**

1.1 The Review Panel was constituted in terms of section 58 (1) of the Public Procurement Act, 2015, as amended (the Act) to hear an application lodged by Pamo Trading Enterprises (Pty) Ltd, hereinafter referred to as the “Applicant”, against the Central Procurement Board of Namibia, the Board, hereinafter referred to as the “1<sup>st</sup> Respondent” whereby the Applicant sought relief from the Review Panel to order the 1<sup>st</sup> Respondent to award Lot D (Erongo Region) to the applicant within 3 days from the date of the Order, in line with section 60 (b) of the Act.

1.2 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. POINTS *IN LIMINE***

2.1 Having noted the points *in limine* in the 1<sup>st</sup> Respondent’s Replying Affidavit, the Chairperson invited the 1<sup>st</sup> Respondent to state the same for the record.

2.2 It is the 1<sup>st</sup> Respondent's submission that a bidder as in the position of the Applicant, has seven days within which to apply to the Review Panel for the review of a decision or action as contemplated in section 59 (1). The Applicant received the Notice for Selection of Award on 04 March 2024. The

standstill periods contemplated in the Act have long since passed, and accordingly, the Review Panel has no jurisdiction to determine a review application outside the period contemplated in section 59 (1).

2.3 The 1<sup>st</sup> Respondent referred to the High Court judgment in the matter of *Paragon Investment (Pty) Ltd JV China Huayun Group v Chairperson: Review Panel* (HC-MD-CIV-MOT-GEN-2022/00264) in which the jurisdiction of the Review Panel was extensively addressed.

2.4 In response, the Applicant informed the Review Panel that it received a Notice of Selection for the Award, which was subsequently followed by a standstill period. The Applicant was informed of the reconsideration application and, accordingly, responded on the request of the 1<sup>st</sup> Respondent on the issues emanating or raised in such a reconsideration application.

2.5 The applicant submits that subsequently, to the reconsideration stage, no review application was lodged with the Review Panel in accordance with section 55 (4B) of the Act. The Applicant is of the considered view that the Act does not prescribe any timeframe of which the successful bidder should apply to the Review Panel (to avoid losing the award) in the event that the Board or the Public entity fails to make an award. Therefore, the Notice of Selection for the Award remains valid, and the Board has become functus in this regard.

2.6 The Applicant further submitted that the Ministry of Health and Social Services and the Board seized it with the debarment and suspension applications, respectively, and it had to approach the High Court on an urgent basis to seek an interdict for the Review Panel decision on the debarment.

2.7 Furthermore, the Applicant's submission is that it was on the basis of the High Court ruling that it is before the Review Panel, and there can be no other platform the Applicant can turn to as far as the matter is concerned. The Applicant is of the considered view that it is not up to the 1<sup>st</sup> Respondent to determine the jurisdiction of the Review Panel as the High Court has already pronounced itself on the matter.

### **3. FINDINGS OF THE REVIEW PANEL**

Having considered the preliminary discussion, the Review Panel made the following findings:

4.1 That the Applicant's application is not in compliance with section 59 (1) of the Act, read in conjunction with Regulation 42 (1) of the Public Procurement Regulations, 2017. This is so having considered the order of events relating to this bid.

4.2 The Review Panel has carefully studied the High Court Judgment, in the matter of *Pamo Trading Enterprises (Pty) Ltd v The Chairperson of the Review Panel* and is of considered view that the Court simply made an advisory statement and in no way made a declaratory order for the Review Panel to hear the matter notwithstanding the relevant provisions of the Public Procurement Act, 2015 as amended.

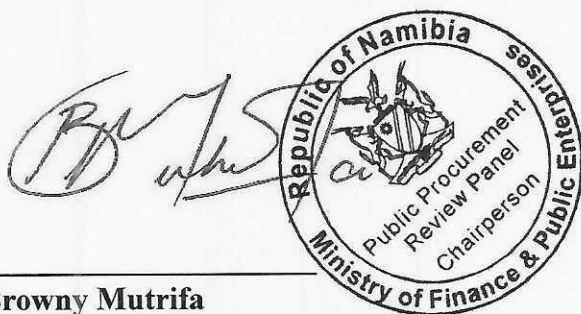
4.3 The Review Panel has considered the evidence, as part of the record, it is noted that the Board's inaction dates to 23 May 2024, and the Applicant ought to have approached the Review Panel by then.

4.4 The Review Panel has considered the High Court Judgment in the matter of *Paragon Investment (Pty) Ltd JV China Huayun Group v Chairperson: Review Panel*, wherein the jurisdiction of the Review Panel was addressed. Therefore, the Review Panel cannot hear a matter brought outside the provisions of section 59 (1) of the Public Procurement Act, read together with Regulation 42 (1) of the Public Procurement Regulations, 2017.

#### 4. DECISION OF THE REVIEW PANEL

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

9.1 That the Review Application is dismissed, in terms of section 60(a) of the Public Procurement Act, 2015, as amended.



The image shows a handwritten signature in black ink, which appears to be 'Brownny Mutrifa'. To the right of the signature is a circular official seal. The seal contains the text 'Republic of Namibia' at the top, 'Ministry of Finance & Public Enterprises' at the bottom, and 'Public Procurement Review Panel Chairperson' in the center. The seal also features the national coat of arms of Namibia.

**Brownny Mutrifa**

**CHAIRPERSON: (i.r.o. this matter)**