



REPUBLIC OF NAMIBIA

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

PUBLIC PROCUREMENT REVIEW PANEL

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**IN THE PUBLIC PROCUREMENT REVIEW HEARING
HELD ON 20 AUGUST 2024**

IN THE MATTER BETWEEN

**NEW SUCCESS INVESTMENT CC JV CHINA JIANGXI INTERNATIONAL
(NAMIBIA) (PTY) LTD** **APPLICANT**

AND

CENTRAL PROCUREMENT BOARD OF NAMIBIA (CPBN) **1st**
RESPONDENT & 15 OTHER RESPONDENTS

**IN A REVIEW APPLICATION MADE IN TERMS OF SECTION 59 OF THE PUBLIC
PROCUREMENT ACT, ACT 15 OF 2015**

**BID NO: W/ONB/CPBN/0/2023 – PROCUREMENT OF CONSTRUCTION OF
OHANGWENA REGIONAL COUNCIL OFFICES AT EENHANA, OHANGWENA
REGION**

**Coram: Hellen Amupolo (Chairperson), with Kenandei Tjivikua, Mekondjo
Katunga, Rainer Trede and Tulimeyo Kaapanda.**

Heard: 20 August 2024

Decided: 20 August 2024

ORDER

1. INTRODUCTION:

- 1.1 A hybrid meeting was held, using both physical and virtual modes.
- 1.2 Having heard **Adv. Mbushandje Ntinda**, for the Applicant, **Mr. Festus Hamukwaya**, for the 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 record, the Review Panel made the following findings and subsequent order hereunder towards the end.

2. POINTS IN LIMINE:

- 2.1 At the commencement of the review proceedings, the Chairperson requested the Parties to raise any point in *limine* that they may have before the merits of the matter are heard. All Parties have indicated that they have no preliminary issues to raise. The Chairperson then granted the Applicant the opportunity to present their case.

**3. GROUNDS FOR THE REVIEW AS CONTAINED IN THE APPLICANT’S
APPLICATION FOR REVIEW:**

- 3.1 The Applicant stated in its application for review that the purpose of this application is to review the decision to select the 2nd Respondent for award of the Procurement of the

Construction of Ohangwena Regional Offices at Eenhana. Ohangwena Region, Procurement Reference No. W/ONB/CPBN-03/2023 (the bid) and to regard the Applicant's bid as non-responsive, as made known in the notice for selection of award dated 25th June 2024 and the decision of the 1st Respondent dated 25th July 2024 communicated on 26th July 2024.

- 3.2 The Applicant further stated that its disqualification in this bid narrates gross negligence and serious ignorance of procurement laws, and decisions of the High Court of Namibia, which it further elaborated in the affidavit.
- 3.3 The Applicant seeks orders in terms of Section 60 (b), (c) and (d) of the Public Procurement Act 15 of 2015 (the Act) as amended.
- 3.4 The Applicant further seeks an order that the 1st Respondent be ordered to seek an order for the extension of the bid validity period in terms of Section 42 (2) of the Public Procurement Act.

4. APPLICANT'S SUBMISSIONS AT THE REVIEW PANEL HEARING:

- 4.1 The Applicant briefly outlined the chronological sequence of events by stating that the Applicant initially received the notice for selection of award in favor of IBuild Supplies (Pty) Ltd JV China Jiangsu Zhingtai Construction Group Namibia (Pty) Ltd, dated 24th January 2024. At the time, the Applicant was found to be non-responsive for one reason only. The Applicant read the reason into record as follows: "*The bidder failed to comply with the legal admissibility evaluation item 1.6.4.10 on page 44 of the Standard Bidding document because: the Bachelor of Science in Civil Engineering for Jairus Shilimontulo Amukalu is not certified as the Commissioner of Oath did not sign the certification stamp.*"
- 4.2 The Applicant submitted an application for reconsideration based on the reason provided by the Board, explaining what constitutes certification in Namibian law. As a result, the 1st Respondent reconsidered its decision and accepted that the Degree Certificate in question was indeed certified as required and proceeded to issue a revised notice of selection of award dated 08th April 2024 in favor of the Applicant. After the 08th April 2024, and considering the provisions of the law, and after the required time within which any reconsideration application could be dealt with or within which an application for review could be filed, on 3rd June 2024, the Applicant wrote to the 1st Respondent setting out the timeline as provided by the Act and the High Court Decisions, and the Applicant was of the view that after such timeline has lapsed, it was no longer possible for the 1st Respondent to even consider any application for reconsideration. Additionally, the 1st Respondent did not respond to the letter written on the 3rd June 2024.

- 4.3 The Applicant further stated that procurement process is governed by the law, the Applicant stressed that Section 55 (5) stipulates that in an absence of an application for review by any other bidder within 7 days of the notice referred to in sub-section 4, the accounting officer must award the contract to the successful bidder. The Applicant submitted that the 1st Respondent indicated in its Replying affidavit that during the standstill period, the Board received an application for reconsideration from IBuild JV Jiangxi Zhingtai Construction Group Namibia (Pty) Ltd (IBuild JV) in terms of Section 55 (4)(A), the the 1st Respondent cannot cite the reconsideration submitted by IBuild JV as a justification for not awarding the bid to the Applicant.
- 4.4 The Applicant hinted on the certification issue by stating that the 1st Respondent became functus as it had already dealt with issue of the certification. The Applicant also inquired why they were not given an opportunity to be heard, given that the same institution that certified the document is the one that provided clarification on how the documents should be certified.
- 4.5 Further, the Applicant submitted that the Notice issued on 25th June 2024 is contrary to the Act, it should therefore, be set aside in terms of Section 60 (c) of the Act and the Board must be ordered to act in a manner which is in compliance with the Act.
- 4.6 The Applicant further stated that the Revised Notice for Procurement Award issued on 25th June 2024 introduced two new reasons for declaring the Applicant's bid as non responsive. The second reason which was not in the executive summary attached to either the 24th January 2024 Notice or the 8th April 2024 Notice surfaced that the Applicant submitted a previously certified copy of ID for Haindongo James Jonas. It is not explained how this new reason was introduced in the third notice for selection of procurement award.
- 4.7 The Applicant indicated that the 1st Respondent acted contrary to Section 52 (9) when it introduced new criteria during the reconsideration process, prescribing the cosmetics of how and where the police certification stamps and signature should appear in a certified copy.

5. 1st RESPONDENT'S SUBMISSION AT THE REVIEW PANEL HEARING:

- 5.1 The 1st Respondent submitted that it has no issue with what was submitted by the Applicant, but would like to provide clarity on what had transpired. Normally during the reconsideration process, the Board reviews the reconsideration request and then refers the matter to the Bid Evaluation Committee. IBuild JV reconsideration was submitted to the Board for reconsideration and the Board resolved, to seek clarification on how documents should be certified.
- 5.2 The 1st Respondent explained that the Namibian Police responded on 25 March 2024, in light of the clarification (a response) from the Namibian Police regarding certification, the 1st Respondent resolved that the clarification provided by the

Namibian Police should be implemented for both the bids currently under reconsideration and under evaluation at the time as well as the future bids.

- 5.3 Upon enquiry by the Review Panel, the 1st Respondent submitted that the Board encountered a situation where multiple bidders had documents that were not fully certified. Hence the clarification which was sought.
- 5.4 The 1st Respondent further conceded with the Applicant that the reconsideration application of IBuild JV was filed on 12th April 2024 way after the 1st Respondent sought clarity from the Namibian Police. The 1st Respondent again conceded to the statement made by the Applicant that the Applicant's application for reconsideration was ignored, as the 1st Respondent did not reply to the Applicant's application for reconsideration.
- 5.5 Further, the applicant also conceded that clarification sought by the Namibian Police stating how certified documents are to be considered is in fact a new methodology that applied to the evaluation of bids which was not inserted in the bidding document, thus contravening section 52(9).

6. INTRESTED PARTY (PUNCHU TRADING CC JV CHINA RAILWAY SEVENTH GROUP NAMIBIA (PTY) LTD)

- 6.1 The 2nd Respondent submitted that the Applicant was disqualified based on two reasons: that the copy of the Degree was not fully certified and that the Applicant submitted a previously certified copy of an Identity document (ID). The 2nd Respondent further submitted that these two documents are contrary to Section 7 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 which states as follows: "*Any commissioner of oaths may, within the area for which he is a commissioner of oaths, administer an oath or affirmation to or take a solemn or attested declaration from any person: Provided that he shall not administer an oath or affirmation or take a solemn or attested declaration in respect of any matter in relation to which he is in terms of any regulation made under section ten prohibited from administering an oath or affirmation or taking a solemn or attested declaration, or if he has reason to believe that the person in question is unwilling to make an oath or affirmation or such a declaration.*"
- 6.2 Further, it is the 2nd Respondent's assertion that the 1st Respondent reserves the right to accept or reject any bid as per the Act and that the Application be dismissed and let the notice for selection of award stand.

7. 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:

- 7.1 That, the 1st Respondent acted contrary to Section 52 (9) in that, it introduced new criteria during the reconsideration process, to prescribe the cosmetics of where and how the Namibian police certification stamps and signatures should appear on the certified copies.
- 7.2 That the 1st Respondent acted contrary to Section 55 (4A) of the Act in that the 1st Respondent failed to respond to the application for reconsideration filed by the Applicant.
- 7.3 That the 1st Respondent conceded, the application for reconsideration filed by IBuild JV was not the reason the Board sought clarity from the Namibian Police, as the clarity was sought earlier before the IBuild JV's reconsideration was received and even before the 2nd notice of selection for award was issued in favour of the Applicant.
- 7.4 That the the Bachelor of Science in Civil Engineering for Jairus Shilimontulo Amukalu is bearing two Namibin police stamps and a name and signature of the certifying police officer, thus in compliance with Section 7 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963 which states as follows:

“Any commissioner of oaths may, within the area for which he is a commissioner of oaths, administer an oath or affirmation to or take a solemn or attested declaration from any person: Provided that he shall not administer an oath or affirmation or take a solemn or attested declaration in respect of any matter in relation to which he is in terms of any regulation made under section ten prohibited from administering an oath or affirmation or taking a solemn or attested declaration, or if he has reason to believe that the person in question is unwilling to make an oath or affirmation or such a declaration.”

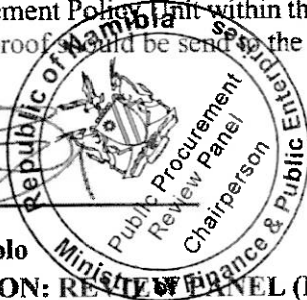
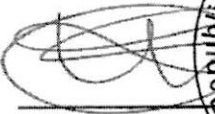
This Act does not specify the cosmetics of how and where the stamps or signatures and names should be placed.

- 7.5 That the 1st Respodent misdirected itself when it disqualified the Applicant based on the criteria which was not part of the bid document.
- 7.6 The sworn declaration from Joolokeni (the Police Officer) contains a date of 11/09/2024, while the stamp on the declaration is dated 31/01/2024, of which date of 11/09/2024 is merely regarded as an error in script which was secondly an attempt for the Applicant to amplify and substantiate their case during the reconsideration application. This was not part of the initial bid submission and has no bearing on the fact that the copy submitted with the bid bears the two police stamps, a name and signature of the certifying police officer.

8. DECISIONS OF THE REVIEW PANEL:

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

- 8.1 In terms of Section 60 (c) the Review Panel set aside the decision the Revised Notice of Selection of Procurement Award dated 25th June 2025 issued by the 1st Respondent and the decision of the 1st Respondent dated 25th July 2024 and communicated on 26th July 2024.
The matter is referred back to the 1st Respondent for reconsideration/revaluation in line with the bid criteria.
- 8.2 Alternatively, in terms of Section 60 (b), directing the 1st Respondent to proceed in a manner that is in compliance with the Act and give effect to the Notice for Selection for Procurement Award dated 8th April 2024.
- 8.3 The 1st Respondent seek an order for extension of the valibity period in terms of Section 49(2) of the Public Procurement Act.
- 8.4 The Public Entity shall provide proof of implementation of this Order to the Procurement Policy Unit within thirty (30) days from receipt date of this Order. A copy of the proof should be send to the Review Panel Secretariat.



Hellen Amupolo
CHAIRPERSON: REVIEW PANEL (IRO THIS MATTER)