



Republic of Namibia
Ministry of Finance and Public Enterprises

**NATIONAL ASSEMBLY RESPONSE TO QUESTIONS BY HON NICO
SMIT, MEMBER OF PARLIAMENT, ON THE PROCUREMENT OF
SUPPLY AND DELIVERY OF PHARMACEUTICAL PRODUCTS FOR
THE MINISTRY OF HEALTH AND SOCIAL SERVICES**

Ipumbu Shiimi, MP

Minister of Finance and Public Enterprises

5 October 2023

Honourable Speaker,
Honourable Members,

I rise to respond to questions, raised by Hon Lipumbu regarding the notice to award the Procurement of Supply and Delivery of Pharmaceutical Products for the Ministry of Health and Social Services to a company co-owned by a five years old minor. A similar question was asked by Hon. Nico Smith.

Hon Speaker,

I am aware of the reporting in local media alleging that a five-year-old child owns the majority shareholding/interest in a juridical entity, which has been awarded a procurement contract as per the provisions of the Act.

The Honourable Member should be aware that I have also written to the Attorney General to seek advice on minors' ownership under the Companies Act of 2004.

It is important to understand that every procurement is conducted through the participation of the legal entities whether being natural or juristic person. In order to establish the legal personality of any entity participating in a bid, the Board relies on the documentation issued by state functionaries which are bestowed with such powers through their respective enabling legislations. On such basis, the CPBN cannot speak to the legality of companies Act issues including the aspects of shareholders eligibility. This competent authority in this regard is the registrar of companies, BIPA.

As a point of departure, it is important to note that the Board, both as an institution and a governance structure is a creature of statute. Thus, the Board draws its powers from the Act in the exercise of its administrative duties. In line with its powers as set out in section 9(1)(m), the Board may approve procurement methods in terms of Section 9(1)(k) of the enabling legislation.

In terms of the Public Procurement Act, 15 of 2015 (*“the Act”*) specifically section 27 as amended, makes provision for different choices of procurement methods depending on the need, nature, and value of the procurement.

The afore-mentioned procurement methods are:

- Open Advertising Method, which comprises of:
 - ✓ Open National Bidding (ONB);
 - ✓ Open International Bidding (OIB);
- Restricted Bidding Process (RB);
- Request for Sealed Quotations;
- Emergency Procurement;
- Execution by Public Entities;
- Request for Proposals;
- Direct Procurement;
- Electronic Reverse Auction; and
- Small Value Procurement.

In the case of the Supply and Delivery of Pharmaceutical Products to the Ministry of Health and Social Services (MoHSS), the Board in terms of section 9(1)(k) approved the Open International Bidding (OIB) as the appropriate procurement method, in that:

- 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.*

Open international bidding was approved on the basis and understanding that it encourages international and local bidders to participate and submit competitive bids that promotes value for money. Furthermore, OIB offers diverse and wider markets to source from, foster competition leading to competitive and lower prices, quality products and different delivery lead time options.

The elaborative justifications for the Board opting and approving Open International Bidding as a procurement method in this respect was to take full advantage of the following benefits:

- **Maximizes Competition:** Open international bidding opens the procurement process to a global pool of suppliers and contractors. This increased competition may lead to more competitive pricing and better quality of goods or services, as suppliers strive to offer the best possible terms.
- **Cost Savings:** Increased competition often results in cost savings for the procuring entity. Suppliers may offer lower prices or more favorable terms to win the contract, ultimately benefiting taxpayers and the public sector.
- **Diverse Options:** Open international bidding allows the procuring entity to evaluate a diverse range of options and choose the one that best aligns with their needs and budget.
- **Best Value for Money:** Ultimately, open international bidding aims to select the bid that offers the best value for money, considering not only price but also quality, delivery times, and other relevant factors.
- **Market Expansion:** For local suppliers, participating in international bidding can serve as a gateway to expand their businesses and access new markets. It may help them gain experience and build their international reputation.

This aspects explain why the bid was open international and any bidder whether national or foreign submitting a lowest substantially responsive bid was awarded the bid.

Cospharm was initially disqualified because it did not initial a correction that it made in its bid. During the reconsideration stage, which is provided for in Section 55(4A) of the Public Procurement Act, 15 of 2015, as amended, Cospharm brought to the attention of the Board the fact that a fully typed form, which was the same as the one filled out with pen, was included in its submission. This fully typed form was duly completed and initialled by the company and did not have any errors on it.

Honourable members,

An assessment of the company's reconsideration application was made, and it was found that its application for reconsideration had merit because the typed form was in its bid.

Based on this, the Bid Evaluation Committee (BEC) was instructed to re-evaluate the company further, and it was found to offer some pharmaceutical products at a much lower price than the majority of the bidders. As a result, it was awarded those products because of its competitive pricing.

With regard to documentation and verification, it's important to note that the submitted documents comprised certified copies of the company's registration certificates, the Good Standing Certificate from the Receiver of Revenue, the Affirmative Action Certificate, and the Good Standing Social Security Certificate, demonstrating the company's employment of 33 individuals. Furthermore, the submission included a Fitness Certificate from the City of Windhoek and a Registration Certificate from the Pharmacy Council of Namibia. The company also submitted 3-year audited financial statements as part of its bid submission.

Honourable Speaker, Honourable members,

The company in question that participated in the bidding process is a limited company (LTD) and not a Close Corporation. Thus, no Founding statement was

submitted, but a Memorandum of Association and Articles of Association, which are constitutive documents of limited companies.

Honourable Speaker, CPBN is fully aware of the allegation. If this is confirmed, appropriate action will be taken in accordance with Section 67 and 68 of the Public Procurement Act, 15 of 2015, as amended, including reporting the matter to the relevant law enforcement agencies.

The assertion that the Board operates in flagrant violation of the country's laws is refuted. The Board is committed to upholding fair dealing and integrity in both procurement processes and its interactions with the public.

In conclusion it is important for the public to note the following: First, the issue of the minor owning a company is not a procurement issue, but a company law matter. The right question we should therefore ask is whether or not it is right for minors to be allowed in terms of the Company's Act to be shareholders in companies. The competent authority to answer this question is BIPA, not CPBN. Secondly, contrary to some reports, Cospharm didn't enjoy any local preference because one shareholder, the child, is a Namibian. As explained before this tender was open for foreign bidders and many other foreign bidders participated. Thirdly, the pharmaceutical products that are being procured are not produced in Namibia and therefor the reason to open up the tender to foreign suppliers is with the view to get competitive prices and quality. Consequently, public resources will be used more sparingly, making it possible to ensure the availability of all needed medicines at all public medical facilities.

I would like to express my gratitude to Hon Iipumbu and Hon Smith for raising this crucial question. It has afforded us the opportunity to offer clarity and provide

information regarding the Procurement of Supply and Delivery of Pharmaceutical Products for the Ministry of Health and Social Services.

I thank you