

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

AT DAR ES SALAAM

APPEAL CASE NO. 10 OF 2019-20

BETWEEN

M/S PUMA LOGISTICS SOLUTION LTD IN JV WITH M/S SIMBA TRAILERS MANUFACTURING LTD.....APPELLANT

AND

PRESIDENT'S OFFICE- REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT (PO-RALG).....RESPONDENT

RULING

CORAM

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| 1. Adv. Rosan Mbwambo | - Ag. Chairperson |
| 2. CPA. Fredrick Rumanyika | - Member |
| 3. Mr. Rhoben Nkori | - Member |
| 4. Ms. Florida Mapunda | - Ag. Secretary |

SECRETARIAT

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|------------------------|-----------------|
| 1. Ms. Violet Limilabo | - Legal Officer |
| 2. Mr. Hamisi O. Tika | - Legal Officer |

FOR THE APPELLANT

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| Mr. Peter K. Kyamani | - Technical Director |
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FOR THE RESPONDENT

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| 1. Mr. Lucas Charles Malunde | - Principal State Attorney |
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2. Mr. Datus Bahati Matuma

- Principal Supplies Officer

3. Eng. Charles Adrian

- Civil Engineer

This Appeal was lodged by M/S Puma Logistics Solution Ltd in JV with M/S Simba Trailers Manufacturing Ltd (hereinafter referred to as "**the Appellant**") against the President's Office- Regional Administration and Local Government commonly known by its acronym, PO-RALG (hereinafter referred to as "**the Respondent**").

The Appeal is in respect of Tender No. ME/022/2018/2019/HQ/G/27 for Supply of Solid Waste Management Equipment under Tanzania Strategic Cities Project Second Additional Financing (TSCP-AF2) -Lot 2 Skip Loaders for mounting skip Buckets-13 units, Skip Buckets for Transporting Waste-73 Units and Tipper Trucks-9 Units (hereinafter referred to as "**the Tender**").

The Tender was conducted using the International Competitive Bidding procedures specified in the World Bank Guidelines for Procurement of Goods, Works and Non- Consultancy Services under International Bank for Reconstruction and Development (IBRD) Loans, Credits and Grants of January 2011, revised on July 2014 (hereinafter referred to as "**World Bank Guidelines**").

After going through the record of Appeal submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**"), the Appeal may be summarized as follows: -

The Respondent through the United Nations Development Business (UNDB) online and Daily News newspaper dated 9th and 10th July 2019 respectively

invited eligible tenderers to participate in the Tender. The deadline for submission was set for 20th August 2019, whereby six tenders were submitted in respect of Lot 2.

Tenders were then subjected to evaluation which was conducted into four stages namely; preliminary, technical, financial and post-qualification. At the preliminary evaluation stage, four tenders including that of the Appellant were disqualified for failure to comply with the requirements of the Tender Document. Specifically, the Appellant's tender was disqualified for submission of a bid security of 141 days instead of 148 days as required by Clause 19.1 of the Instruction To Bidders (**ITB**). The remaining two tenders were technically evaluated and found to have complied with all the requirements of the Tender Document. The tenders were then subjected to financial evaluation which included corrections of arithmetic errors, conversion of currency from USD to Tanzanian Shillings and ranking of the bidders according to their evaluated prices. In that process M/s Eristic (T) Investment Ltd emerged to be the first ranked, thus it was post-qualified and the firm was found to be successful. Finally, the Evaluation Committee recommended award of the Tender to it at a contract price of USD. 1,838,695.00 and TZS. 291,096,000.00 VAT exclusive. The Tender Board in its meeting held on 9th September 2019 approved the award as recommended by the Evaluation Committee.

On 19th September 2019, the Respondent issued the Notice of Intention to award the Tender to all bidders who participated in the Tender. The Notice informed the Appellant that the Respondent intends to award the Tender

to M/s Eristic (T) Investment Ltd. The letter was received by the Appellant on 1st October 2019.

Dissatisfied, on 3rd October 2019, the Appellant applied for administrative review to the Respondent's Accounting Officer challenging the Notice of Intention to award as it failed to comply with the requirement of Regulation 231(4) of the Public Procurement Regulations, Government Notice No. 446 of 2013 as amended hereinafter referred to as **(the Regulations)**, for failure to provide reasons for the Appellant's disqualification.

The Respondent issued its decision on 15th October 2019 dismissing the Appellant's complaints. However, the Appellant claimed to have not received the Respondent's decision. Consequently, on 21st October the Appellant filed this Appeal.

GROUND OF APPEAL

The Appellant's grounds of Appeal may be summarised as follows:-

1. That, the Appellant disputes the Notice of Intention to award the Tender for failure to disclose reasons that led to its disqualification. The Appellant claims that the Respondent's omission in this regard contravenes Regulation 231(4) of the Regulations.
2. That, the Appellant submitted a complaint to the Respondent that was received on 7th October 2019 disputing the procedural irregularity committed by the Respondent. Unfortunately, the Respondent failed to issue the decision within seven working days contrary to the requirement

of the law. That act led the Appellant to doubt the procedures of this tender.

3. Finally, the Appellant prayed for the following orders:-

- i. Review of the Tender process; and
- ii. The Respondent to award the Tender to the Appellant.

REPLY BY THE RESPONDENT

The Respondent's reply to the grounds of Appeal may be summarised as follows:-

1. That, the Notice of Intention to award issued to all bidders indicated the name that has been proposed for award after completion of the evaluation process pursuant to Clause 38.1 of the ITB. The Respondent did not reveal other bidders information for purpose of confidentiality in compliance of Clause 26 of the ITB. A bidder who wants to be informed reasons for its disqualification ought to request the borrower for such reason. The borrower is required to give explanation in writing as the Respondent's did by its letter dated 15th October 2019. This was pursuant to Clause 2.65 of the World Bank Guidelines.
2. That, the Respondent denied the Appellant's contention that, its complaint letter was submitted to it on 7th October 2019 while it was received by its office in Dodoma on 9th October 2019.
3. That, the Appeal has been filed pre-maturely, since the letter for Appeal is dated 17th October 2019 that is five days from the date of submitting a complaint letter to the Respondent.

4. That, the tender has been proposed for award to the lowest evaluated bidder who had complied with the requirements of the Tender Document and not the lowest quoted price as contended by the Appellant.
5. Finally, the Respondent prayed for the following orders:-
 - i. A declaration that the Appellant has no grounds of Appeal, therefore, the Respondent should be allowed to proceed with the Tender Process.
 - ii. That the Appellant was fairly disqualified for failure to comply with the requirements of the Tender Document. Thus the Respondent be allowed to proceed with the procurement process.

At the hearing of this Appeal the Appeals Authority, *suo moto*, raised a concern on its jurisdiction to entertain this Appeal. This is because; the Tender was conducted under the World Bank Guidelines. The Appeals Authority therefore, invited both parties to address it as to whether or not it has jurisdiction to entertain this Appeal.

SUBMISSIONS BY THE APPELLANT

The Appellant submitted that; it is not much conversant with the procurement process. However, the Respondent was required to comply with Tanzanian procurement laws regardless of the fact that the project is funded by the World Bank. The Appellant submitted that; the main purpose of its complaint was to know the reason why its tender was disqualified from the Tender process. Thus, the Respondent ought to have responded

to the Appellant's concerns as that was in accordance with law governing public procurement in Tanzania.

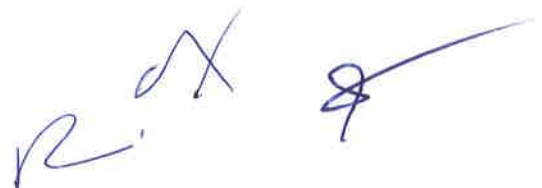
SUBMISSIONS BY THE RESPONDENT

On his part the Respondent's counsel submitted that, the Tender under Appeal is a donor funded project which is governed by Section 4(1) of the Public Procurement Act read together with Regulation 11(3) of the Regulations. The counsel argued further that the Appellant's main contention was to be availed reason which led to its disqualification. Then the Appellant ought to have complied with the complaint review mechanisms provided in the World Bank Guidelines under Clause 2.65. Therefore, the Appeals Authority has no jurisdiction to entertain the Appeal, since the World Bank Guidelines provides procedures to be followed by a tenderer who is dissatisfied with a procurement process. Finally, the Respondent prayed for dismissal of this Appeal.

ANALYSIS BY THE APPEALS AUTHORITY

Having heard submission by the parties, the main issue for determination is **whether or not the Appeals Authority has jurisdiction to entertain this Appeal.**

In resolving this issue, the Appeals Authority reviewed the Tender Document and observed that, Clause 4 of the Invitation For Bids (IFB) provide in clear terms that, the Tender under Appeal was to be conducted using the World Banks Guidelines. The Clause reads:



Clause 4 "Bidding will be conducted through the National Competitive Bidding (NCB) procedures specified in the World Bank Guidelines: Procurement under IBRD Loans and IDA Credits current edition), and is open to all bidders from eligible Source Countries as defined in the Guidelines."

The Appeals Authority also perused the said World Bank Guidelines and observed that Clause 2.65 provide for a mechanism which can be followed by an aggrieved bidder. In brief, the Guidelines provide that, in the event a bidder is not selected at the first instance is required to request for explanation from the borrower. The borrower is then required to provide in writing an explanation as to why such bid was not selected. If a bidder is dissatisfied with the reasons given by the borrower, may further seek a meeting with the Bank through a Regional Procurement Manager of the borrowing country in terms of Paragraph 15 of Appendix 3 of the World Bank Guidelines. These provisions read:

Clause 2.65 " In the publication of the award of contract referred to in paragraph 2.60 and paragraph 7 of Appendix 1, the Borrower shall specify that any bidder who wishes to ascertain the grounds on which its bid was not selected, should request an explanation from the borrower. The Borrower shall promptly provide in writing an explanation of why such bid was not selected. If a bidder requests a debriefing meeting, the bidder shall bear all their costs of attending such a debriefing."

Paragraph 15"*As stated in paragraph 2.65, if, after notification of Award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Borrower. If the bidder is not satisfied with the written explanation given and wishes to seek a meeting with the Bank, it may do so by addressing the Regional Procurement Manager for the Borrowing country, who will arrange a meeting at the appropriate level and with relevant staff. The purpose of such meeting is only to discuss the bidder's bid, and neither to reverse the Bank's position that has been conveyed to the Borrower nor to discuss the bids of competitors.*"

In this Appeal the Appellant was notified that its bid was not selected through a letter dated 19th September 2019, received on 1st October 2019. After receipt of such notification the Appellant lodged a complaint to the Respondent challenging the Respondent's failure to state reason for its disqualification based on Regulation 231(4) of the Regulations. The Respondent upon receipt of the complaint responded through a letter dated 15th October 2019. In this letter the Respondent reviewed the complaint and issued a decision. Dissatisfied further the Appellant filed this Appeal. From the above facts, the Appeals Authority finds that the procedures followed by the parties are the ones provided under the Public Procurement Act of 2011 as amended and its Regulations.

The Appeals Authority is of the firm view that since the Tender under Appeal was conducted under the World Bank Guidelines; the parties were obliged to comply with debriefing procedures provided under it. Based on the above findings the Appeals Authority finds itself to have no jurisdiction to entertain this Appeal.

Therefore, the Appeal is hereby dismissed. Each party to bear its own costs. It is so ordered.

The Right of Judicial Review as per Section 101 of the Act is explained to the parties.

This Ruling is delivered in the presence of the parties this 8th day of November 2019.



ADVOCATE ROSAN MBWAMBO

Ag: CHAIRMAN

MEMBERS:

1. CPA. FREDRICK RUMANYIKA..... 

2. MR. RHOBEN NKORI..... 