

IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY
AT DAR ES SALAAM

APPEAL NO. 18 OF 2015-16

BETWEEN

THE INSTITUTE OF ACCOUNTANCY ARUSHAAPPELLANT

AND

GOVERNMENT PROCUREMENT SERVICES AGENCY
.....RESPONDENT

DECISION

CORAM

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| 1. Ms. Monica P. Otaru | - | Ag. Chairperson |
| 2. Mrs. Rosemary A. Lulabuka | - | Member |
| 3. Mr. Louis P. Accaro | - | Member |
| 4. Ms. Florida R. Mapunda | - | Ag. Secretary |

SECRETARIAT

- | | | |
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| 1. Mr. Hamis O. Tika | - | Legal Officer |
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FOR THE APPELLANT

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| 1. Mr. Ikandiko Kushoka | - | Dar es Salaam Compus Manager |
| 2. Mr. Papias Njaala | - | Head of Department –Consultancy &
Executive Development |

FOR THE RESPONDENT

- | | | |
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| 1. Mr. Allen Kasamala | - | Head of Legal Unit |
| 2. Mr. Jacob Kibona | - | Director of Procurement |
| 3. Ms. Janeth Musyami | - | Supplies Officer |

This Decision was scheduled for delivery today, 22nd January, 2016 and we proceed to do so.

The Appeal was lodged by the Institute of Accountancy Arusha (hereinafter referred to as "the Appellant") against the Government Procurement Services Agency, commonly known by its acronym GPSA (hereinafter referred to as "the Respondent").

The Appeal is in respect of Tender No. AE/018/2014-15/HQ/C/24 for provision of Training Services in Procurement and Contract Management of Local Government Authorities (hereinafter referred to as "the Tender").

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

On 9th January, 2015 the Respondent vide Mwananchi Newspaper invited consulting firms to express their interest in relation to the Tender. Deadline for submission was 23rd January, 2015 and fifteen (15) applicants submitted their expression of interest. After evaluation, six firms were shortlisted. The shortlisted firms were then issued with the Request for Proposal on 18th March 2015. The deadline for submission of proposals was set on 17th April 2015, whereby 4 applicants submitted their proposals. The said firms were;

1. M/s Bureau for Industrial Cooperation (BICO),
2. M/s Local Government Training Institute in association with M/s Success Consultants East Africa,
3. M/s Tanzania Public Service College, and;
4. M/s Institute of Accountancy Arusha.

After evaluation of the technical proposals all four firms were found to have scored above the minimum threshold of technical score, that is 80%. Thus, were invited for opening of financial proposals, which took place on 12th June 2015. During evaluation of financial proposals, M/s Tanzania Public Service College (TPSC) was disqualified. The remained three financial proposals were subjected to price comparison. Thereafter, the evaluation committee recommended the award to M/s Institute of Accountancy Arusha at the Contract Price of Tanzania Shillings Three Million Four hundred Seventy Thousands Only (TZS 3,470,000.00) per Training, including developing of new training materials. The recommendation was approved by the Tender Board, through circular resolution of 1st September, 2015.

On 7th October 2015, the Respondent vide a letter with Ref. No. CEA/169/421/02/"k"/212 issued notice of Intention to Award the Tender to M/s Institute of Accountancy Arusha, to all remaining tenderers'. On 21st October 2015, M/s Local Government Training Institute in association with M/s Success Consultants East Africa lodged a complaint to the Respondent challenging the proposed award.

The Respondent vide its letter with ref No. AE/018/2014-114/HQ/C/24/41 dated 29th October, 2015 suspended the procurement process and informed the four tenderers of the complaint. In determining the complaint, the Respondent appointed an independent review panel, which re-evaluated the tender thereby finding M./s Institute of Accountancy Arusha to be non-responsive and recommended the award to M/s Local Government Training Institute in association with Success Consultants East Africa, at the contract price of Tanzania Shillings Eight Million nine Hundred Forty Four Thousand Eight Hundred Only (TZS. 8,944,800.00) inclusive of taxes.

On 25th November, 2015 the Respondent vide a letter with Ref. No. AE/018/2014-15/HQ/C/24/49 issued another Notice of Intention to Award the Tender to M/s Local Government Training Institute in Association with Success Consultants East Africa.

Being aggrieved by the Respondent's reviewed award decision, on 8th December 2015, the Appellant lodged this Appeal.

THE APPEALS AUTHORITY

Before going into the merits of the Appeal, some procedural irregularities have been observed *suo moto* concerning the decision of the Respondent.

As stated above, on 7th October 2015 the Respondent issued Notice of Intention to Award the Tender to the Appellant. On 21st October 2015, the Notice was challenged by M/s Local Government Training Institute in association with Success Consultants East Africa. On 29th October, 2015 the Respondent suspended the procurement process and informed the tenderers about the existence of the complaint. On 25th November, 2015 the Respondent's decision was delivered nullifying the earlier Notice of Intention to Award, instead, intending to award the same to M/s Local Government Training Institute in Association with Success Consultant East.

According to Section 96 of the Public Procurement Act, Cap 410 (hereinafter referred to as "the Act"), read together with Regulation 106(4) of the Public Procurement Regulations, GN 446 of 2013 (hereinafter referred to as "the Regulations") the Respondent was required to issue a written decision within 14 days from the date of receipt of the complaint. Clearly the Respondent did not do so. Although it is not clear as to when the Respondent

received the complaint, but assuming it was received on 29th October 2015, on the very day they notified the tenderers, the decision was therefore delivered after lapse of almost a month; hence contravening the requirement of Section 96 of the Act.

The Respondent had erred in law for issuing its decision beyond the required time limit. Thus, it goes without saying that the decision issued had no legal base, hence a nullity in the eyes of the law; and therefore all acts that followed were equally a nullity.

By virtue of Section 97(1) and (2)(a) of the Act, M/s Local Government Training Institute having not received the Respondent's decision within 14 days, were required to submit their complaint to this Appeals Authority, since powers of the Respondent to make a decision thereafter were ousted by the law. Unfortunately, M/s local Government Training Institute did not exercise that right, thereby condoning the Respondent's silence.

It is further observed that although the Respondent suspended the procurement process and notified all tenderers about the existence of the complaint, the tenderers were not informed about the substance or content of the complaint, contrary to Regulation 106(1) (a) of the Regulations which requires the Respondent to notify all tenderers who participated in the Tender, of the complaint and its substance within 3 working days of receipt thereof. The rationale here is to give the tenderers the option to join in the proceedings. As a result, the tenderers were denied the right.

All in all, we are of the settled view that, since the decision of the Respondent was issued in contravention of the law and therefore a nullity, there is no

decision capable of being challenged in the eyes of the law. Thus we shall not proceed any further with the merits of the Appeal.

The Appeals Authority therefore nullifies all actions done by the Respondent after lapse of 14 days. The Respondent is ordered to resume to its earlier position commencing from the point of issuance of the Notice of Intention to Award of 7th October, 2015 and proceed with the procurement processes which follow thereafter.

As this point was raised *suo moto*, each party shall bear own costs.

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

This Decision is delivered in the presence of the Appellant and absence of the Respondent, at Dar es Salam, this 22nd January, 2016.



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Ms. M.P. OTARU

Ag. CHAIRPERSON

MEMBERS:

1. MRS. R.A. LULABUKA



2. MR. L.P. ACCARO

