

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 25 OF 2023-24**

**BETWEEN**

**M/S DEWPIPE COMPANY LTD.....APPELLANT**

**AND**

**TANZANIA NATIONAL ROADS AGENCY**

**(TANROADS) ARUSHA.....RESPONDENT**

**DECISION**

**CORAM**

- |                                     |               |
|-------------------------------------|---------------|
| 1. Hon. Justice (rtd) Souda Mjasiri | - Chairperson |
| 2. Adv. Rosan Mbwambo               | - Member      |
| 3. Eng. Stephen Makigo              | - Member      |
| 4. Mr. James Sando                  | - Secretary   |

**SECRETARIAT**

- |                         |                        |
|-------------------------|------------------------|
| 1. Ms. Agnes Sayi       | - Senior Legal Officer |
| 2. Ms. Violet Limilabo  | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer        |

**FOR THE APPELLANT**

- |                             |   |
|-----------------------------|---|
| 1. Mr. Vallentino Mwantimwa | - Managing Director - Dewpipe Company Ltd |
|-----------------------------|---|



## FOR THE RESPONDENT

1. Mr. Usaje Mwambene - State Attorney - TANROADS
2. Mr. Godfrey Reuben - Chairman of the Tender Board  
TANROADS
3. Mr. Godlizen Philipo - Incharge of Procurement Unit -  
TANROADS

The Appeal was lodged by **M/S Dewpipe Company Ltd** (hereinafter referred to as "**the Appellant**") against the **Tanzania National Roads Agency - Arusha** commonly known by its acronym as (**TANROADS**) (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR36/001/2023/2024/W/90 for Routine/Recurrent Works along TCA Jct - Namanga (2+000-51+000) (P) Labour Based Road Works Class III and above (Exclusively Reserved for Arusha, Kilimanjaro and Manyara Regions) (hereinafter referred to as "**the Tender**").

The background of this Appeal may be summarized from the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**") as follows: -

The Tender was conducted through Restricted National Competitive Tendering Method as specified in the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 446 of 2013 as amended (hereinafter referred as "**the Regulations**").

2



On 24<sup>th</sup> October 2023, the Respondent invited tenderers through the Tanzania National e-Procurement System of Tanzania (NeST). The deadline for submission of tenders was on 7<sup>th</sup> November 2023. On the deadline, eleven tenders were received by the Respondent including that of the Appellant.

The received tenders were subjected to evaluation. After completion of the Evaluation process, the Evaluation Committee recommended award of the Tender to M/S Mama Deryson Enterprises Ltd who was the first ranked tenderer. The recommended contract price was Tanzania Shillings Twenty Eighty Million Five Hundred Twenty Three Thousand Two Hundred only (TZS 28,523,200) VAT Inclusive.

The Tender Board at its meeting held on 15<sup>th</sup> November 2023, deliberated on the evaluation report. It observed that the Tender was for labour based road works class III and above exclusively reserved for Arusha, Kilimanjaro and Manyara Regions. Furthermore, it noted that three tenderers namely: - M/S Prosc Development Ltd, M/S Nyabha Women Group Ltd and the Appellant inclusive were disqualified to participate in this Tender. This was due to not having offices within the specified regions.

Moreover, the Tender Board noticed that M/S Mama Deryson Enterprises Ltd, the lowest evaluated tenderer in Tender No.TR36/001/2023/2024/W/90 and Tender No. TR36/001/2023/2024/W/91 had submitted the same bank statement of Tanzania Shillings Six Million One Hundred Fifty Five Thousand Four Hundred Thirty Six only (6,155,436.00) as a working capital contrary to the



requirement provided in the Tender Document of Tanzania Shillings Ten Million Five Hundred Thousand only (10,500,000.00). Therefore, it resolved that even the proposed tenderer had not complied with the requirements of the Tender Document. Thus, it recommended award of the Tender to the fourth lowest evaluated tenderer, M/S Dotace Enterprises Company Ltd. The recommended contract price was Tanzania Shillings Thirty Three Million Five Hundred Forty Five Thousand One Hundred Only (33,545,100.00) VAT inclusive.

On 4<sup>th</sup> December 2023, the Respondent issued the Notice of Intention to award the Tender. The Notice informed tenderers that the Respondent intends to award the Tender to M/S Dotace Enterprises Company Ltd. Further, the recommended contract price was Tanzania Shillings Thirty Three Million Five Hundred Forty Five Thousand One Hundred Only (33,545,100.00) VAT inclusive. The Notice also informed the Appellant that its tender was disqualified for not having an office within the specified regions of Arusha, Kilimanjaro and Manyara.

Dissatisfied with the reason for its disqualification, on 8<sup>th</sup> December 2023, the Appellant applied for administrative review to the Respondent. The Respondent through a letter dated 11<sup>th</sup> December 2023, issued its decision which dismissed the Appellant's complaints. Aggrieved further on 14<sup>th</sup> December 2023, the Appellant filed this Appeal to the Appeals Authority.

When the matter was called on for hearing the following issues were framed namely: -



**1.0 Whether the disqualification of the Appellant's tender was justified; and**

**2.0 What reliefs, if any, are the parties entitled to?**

### **SUBMISSIONS BY THE APPELLANT**

The Appellant's submissions on the first issue were made by Mr. Vallentino Mwantimwa, Managing Director from the Appellant's office. He commenced his submissions by stating that, he saw the Tender advertisement in the NeSt. After reading it, he observed that the Tender was exclusively reserved for Arusha, Kilimanjaro and Manyara regions. Having observed this, he contacted the Public Procurement Regulatory Authority (PPRA) for the purpose of being advised as to how it could participate in the said Tender. The PPRA advised him to obtain a license in one of the specified regions. Based on that given advice, he obtained a licence and opened a branch in Arusha region.

Mr. Vallentino submitted further that, the Appellant never had an office or operated any business in Arusha region prior to this Tender. However, based on the PPRA's advice, it decided to open a branch office in order to comply with the requirement of the Tender Document.

Mr. Vallentino stated that the Respondent's Tender Document had not specified that the business operated in those reserved regions should have accumulated certain years of business experience. Thus, the Appellant complied with the requirement of the Tender Document by submitting a business license which indicated that it had an office in Monduli District



Council within Arusha region. Furthermore, the business license which indicated that the Appellant had a branch in Arusha was attached in the NeSt. The Appellant stated further that apart from opening a branch in Arusha, it had a registered office in Dodoma. Therefore, the Appellant insisted that it complied with the requirements of the Tender Document. Hence, it should be awarded the Tender.

Finally, the Appellant prayed for the following orders: -

- i. Award of the Tender to the Appellant as it complied with the requirements of the Tender Document; and
- ii. Refund to the Appellant the Appeal filing fee.

### **SUBMISSIONS BY THE RESPONDENT**

The Respondent's submissions were made by Mr. Usaje Mwambene, State Attorney from the Respondent's office. He commenced his submissions on the first issue by stating that, he was in agreement with what has been stated by the Appellant that the Tender was exclusively reserved for tenderers in Arusha, Kilimanjaro and Manyara regions. According to Items 2 and 3 of the Invitation To Tender (ITT), the Tender was exclusively reserved for Arusha, Kilimanjaro and Manyara Regions.

The learned State Attorney submitted that the Tender was solely restricted to three regions due to the nature of the project being labour based. Consequently, the restriction to three regions intended to ensure that social aspects of the host and neighbouring regions are taken into account in line with the public procurement principles and regulations.



The learned State Attorney submitted that the Respondent expected that all tenderers participating in the Tender would be from within the specified regions and have registered offices in these regions. The Appellant failed to comply with such a requirement. According to the official search made to the Business Registration and Licensing Agency (BRELA), it indicated that the Appellant's registered office is located in Dodoma District, in Mpunguzi Ward, near Mlangwa Primary School in Dodoma region. This was outside the specified three regions namely; Arusha, Kilimanjaro and Manyara. Furthermore, even the record of the Appellant as per the Contractors Registration Board (CRB) indicates that the Appellant's registered office is located in Dodoma.

The learned State Attorney elaborated that according to BRELA's official search, the Appellant's directors in charge of the office were Mr. Vallentino Mwantimwa and Geophrey Watson Magila. None of the registered directors was in charge of the alleged office in the Arusha Branch. The Appellant indicated in NeST that the officer in charge of the Arusha office was Violeth Elibariki, without explicitly mentioning her role, authority, delegation and designation in the Appellant's company.

The learned State Attorney contended that the Appellant submitted a business license issued by the Monduli District Council. The said license specified that the Appellant had a branch office in Arusha region. He stated that, the said license was sought for this Tender in order to misrepresent that the Appellant had a registered office in Arusha.



The learned State Attorney elaborated that the Appellant's business licence was issued by the Monduli District Council on 31<sup>st</sup> October 2023. That is, seven days after the Respondent had advertised the Tender on 24<sup>th</sup> October 2023 which required that the Tender be exclusively reserved for three regions of Arusha, Kilimanjaro and Manyara. There was neither a previous license nor renewal that had been issued by the Monduli District Council. The Appellant's act was unprofessional with the intention to misrepresent that it had been operating within the reserved area at the time of tendering, a matter that was not true.

The Respondent submitted that the business license issued after advertisement of the Tender cannot on its own qualify the Appellant to be eligible to participate in the Tender exclusively reserved for Arusha, Kilimanjaro and Manyara regions. Hence, the Appellant's act contravenes the Act and the Regulations which require transparency and proper dealings. According to the learned State Attorney the Appellant was fairly disqualified for failure to comply with the requirements of the Tender Document.

Finally, the Respondent prayed for the following orders: -

- i. Dismissal of the Appeal in its entirety;
- ii. Declare that the Appellant was not qualified to participate in the Tender;
- iii. The Respondent be allowed to proceed with the Tender process; and





- iv. Any other reliefs, the Appeals Authority may deem fit to grant.

## **ANALYSIS BY THE APPEALS AUTHORITY**

### **1.0 Whether the disqualification of the Appellant' tender was justified**

In resolving this issue, the Appeals Authority reviewed the record of Appeal and observed that the Appellant was disqualified for not having an office within the exclusively reserved regions of Arusha, Kilimanjaro and Manyara. The Appellant on its part, claimed to have complied with such a requirement as it submitted a business license indicating that it has a branch office in Monduli Arusha, a region within the specified regional preference.

In order to ascertain the parties' contentions, the Appeals Authority reviewed the Tender Document and observed that, Items 2 and 3 of the ITT and Clauses 2 and 8 of the Tender Data Sheet (TDS) provide that the Tender was exclusively reserved for Arusha, Kilimanjaro and Manyara Regions. Items 2 and 3 of the ITT and Clauses 2 and 8 of the TDS read as follows:-

*"2. The Government of Tanzania has set aside funds for the operation of the TANROADS- ARUSHA REGIONAL OFFICE during the financial year 2023/2024. It is intended that part of the proceeds of the fund will be used to cover eligible payment under the contract for Routine/ Recurrent works along TCA JCT- Namanga (2+000-51+000) (P) Labour Based Road works Class*



*III and above (Exclusively Reserved for Arusha, Kilimanjaro and Manyara Regional).*

3. The TANROADS - ARUSHA REGIONAL OFFICE now invites tenders from contractors registered or capable of being registered in contractor Class Two, Contractor Class three and Contractor Class One for construction of Routine/Recurrent works along TCA Jct - Namanga (2+000-51+000) (P) Labour Based Road works Class III and above **(Exclusively Reserved for Arusha, Kilimanjaro and Manyara Regional).**

TDS 2. Routine/recurrent Works along TCA Jct –Namanga (2+000-51+000) (P) **registered with Labour Based Contractors in civil works (Exclusively Reserved for Arusha, Kilimanjaro and Manyara Regional).**

8. Routine/Recurrent works along TCA Jct – Namanga (2+000-51+000) (P) Labour Based Road works Class III and above **(Exclusively Reserved for Arusha, Kilimanjaro and Manyara Regional"**

*[Emphasis Added)*

The above quoted clauses of the Tender Document clearly indicate and confirm that the Tender was for routine or recurrent labour-based works class three and above exclusively reserved for Arusha, Kilimanjaro and Manyara regions.



The Appeals Authority reviewed the record of Appeal and observed that the parties are not in dispute that the Appellant's registered office is in Dodoma. The only dispute is that the Appellant claimed to have submitted a business license, B.L. No: BL1000372923-2400000624 issued by Monduli District Council on 31<sup>st</sup> October 2023. The said business license shows that the Appellant has a branch at Engaruka Ward, within Rerendeni in Arusha Region. The Respondent stated that the official search from BRELA and CRB specifies that the Appellant's registered office is located in Dodoma outside the exclusive reserved regions of Arusha, Kilimanjaro and Manyara. The branch office indicated by the submitted business license is not in the records of BRELA and CRB.

To substantiate the parties' contention, the Appeals Authority through a letter dated 11<sup>th</sup> January 2023 with Ref. No. PPAA/APPEALS/25/09/2023-24 requested for an official search from BRELA in respect of the Appellant's registered office. BRELA responded and stated that the Appellant's registered office is located at Mpunguzi near Mlangwa Primary School, within Dodoma District in Dodoma Region. Furthermore, the Appeals Authority observed from the record provided by the CRB that the Appellant's registered office is located at Mpunguzi in Dodoma region.

During the hearing, Members of the Appeals Authority asked the Appellant whether it operated any business or had an office in Arusha. The Appellant responded that it had never operated any business and never had any office in Arusha prior to the advertisement of the Tender. Furthermore, it



stated that it has just established a branch in Arusha for the purpose of complying with the requirements of the Tender Document.

The Appeals Authority is of the view that the Tender Document provides clearly that the Tender was exclusively reserved for tenderers from Arusha, Kilimanjaro and Manyara regions. The record of Appeal indicates that the Appellant has its registered office located at Mpunguzi near Mlangwa Primary School, within Dodoma District in Dodoma Region. The record does not include the Appellant's branch office in Monduli Arusha. Furthermore, the Appellant conceded during the hearing that it had neither a business nor an office in Arusha except for the office that has just been opened as a branch for the purpose of compliance with the requirement of the Tender. From the above observations, the Appeals Authority finds the Appellant to have not complied with the requirement of the Tender Document.

Therefore, given the above findings, the Respondent's act of disqualifying the Appellant is in compliance with the requirement of Regulation 206(2) of the Regulations. This Regulation provides clearly that a tender which is not responsive to the requirements of the Tender Document shall be rejected and it may not be made responsive by correction or reservation. Regulation 206(2) reads as follows: -

*"Reg. 206(2) where a tender is not responsive to the tender document, it shall be rejected by the procuring entity and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation."*



Consequently, from the above findings the Appeals Authority concludes the first issue in the affirmative that the disqualification of the Appellant's tender was justified.

**2.0 What reliefs, if any, are the parties entitled to?**

Taking cognizance of the findings hereinabove, the Appeals Authority hereby dismiss the Appeal for lack of merits. The Respondent is ordered to proceed with the Tender process in compliance with the law.

We make no order as to costs. It is so ordered.

This decision is binding and can be enforced in accordance with Section 97(8) of the Act.

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 parties this 18<sup>th</sup> day of January 2024.

**HON. JUSTICE (rtd) SAUDA MJASIRI**



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. ADV. ROSAN MBWAMBO**.....  


**2. ENG. STEPHEN MAKIGO**.....  
