

**IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY
AT DAR ES SALAAM.**

APPEAL CASE NO. 29 OF 2013-14.

BETWEEN

ALPHA QUALITY SERVICES.....APPELLANT

AND

TANZANIA PORTS AUTHORITY.....RESPONDENT

DECISION

CORAM

1. Hon. Augusta G. Bubeshi, J. (rtd) -Chairperson
2. Mrs. Nuru S.N. Inyangete -Member
3. Mr. Haruni S.Madoffe -Member
4. Mrs. Rosemary A. Lulabuka -Member
5. Mr. Ole-Mbille Kissioki -Ag. Secretary

SECRETARIAT

- | | |
|-------------------------|--------------------------|
| 1. Mrs.Toni S. Mbilinyi | -Principal Legal Officer |
| 2. Mr. Hamisi Tika | - Legal Officer |

FOR THE APPELANT

- | | |
|---------------------------|---------------------|
| 1. Mr. John Mwansasu | -Managing Director. |
| 2. Mr. Ally Nyalile | -Supervisor |
| 3. Ms. Kissa Mwansasu | -Director |
| 4. Ms Nyamande T.Kazimiri | -Advocate |

FOR THE RESPONDENT

Mr. Lugaziya - Advocate

This decision was scheduled for delivery today 31st March, 2014 and we proceed to deliver it.

The appeal at hand was lodged by **ALPHA QUALITY SERVICES** (hereinafter referred to as "**the Appellant**") against the **TANZANIA PORTS AUTHORITY** commonly known by its acronym **TPA** (hereinafter referred to as "**the Respondent**").

The appeal is in respect of Tender No. **AE/016/2013-14/MZA/10 for Provision of Casual Labourers for Operational and Non Operational Services at Mwanza North, Mwanza South, Bukoba and Kemono Ports** (hereinafter referred to as "**the tender**"). The tender was divided in three lots, respectively.

The appellant was amongst seven (7) bidders who had submitted their bids in response to an invitation by the Respondent through the National Competitive tendering method. Other bidders were; M/s Shippers Steveroring and Forwarders Co. Ltd; M/s Umoja wa Wabebaji Mizigo Custom Bukoba (UWAKA); M/s Mwanza South Porters Cooperative Society Ltd; M/S Umoja wa Makuri Kagera (UMKA); M/S Ushirika wa Wahudumu wa Bandari Mwanza Kaskazini Ltd and M/S Dynamic Ships Contractors & General Services Ltd.

The tenders were then subjected to evaluation which was conducted in two stages namely preliminary and detailed evaluation.

At the preliminary evaluation stage, eligibility of tenders was verified. As a result five tenderers including the appellant, were disqualified for being non responsive to the bidding document. The appellant's tender was rejected because for non responsiveness in that it did not state the bid validity period of 120 days.

Two tenderers namely M/S Ushirika wa Wahudumu wa Bandari Mwanza Kaskazini Ltd and M/S Dynamic Ships Contractors & General Services Ltd were qualified for detailed evaluation.

During the detailed evaluation, technical responsiveness and financial capability were verified. On the technical aspect, both tenderers were qualified. However, on the financial aspect M/s Dynamic Ships Contractors & General Services Ltd who tendered for all the three lots at the rate of 20% administration cost was found to be the lowest compared to M/S Ushirika wa Wahudumu wa Bandari Mwanza Kaskazini Ltd who tendered for only two lots at the rate of 20% administration costs.

Thus the Evaluation Committee recommended to the Respondent's Tender Board that M/S Dynamic Ships Contractors & General Services Ltd be awarded all the three lots of the tender.

The appellant, being dissatisfied with the disqualification appealed to the Public Procurement Appeals Authority on the following grounds;

- i. That, there was no criterion in the tender document which required the tenderer to attach or submit the bid validity period or any statement to that effect. Thus, the Respondent had used a criterion which was not stated in The tender Document, contrary to S.51 of Public Procurement Act, 2011 (hereinafter referred to as "the Act") and Regulation 203(1) of Public Procurement (goods, works, non-consultant Services and disposal of public assets by Tender Government Notice No. 446 of 2013) (hereinafter referred to as **GN. No. 446 of 2013**).
- ii. That, basing on (i) above, the Appellant Bid Security issued by Covenant bank in the form of bankers cheque on the 15/1/2014 was returned to the Respondent, without any justification while the same can be cashed within 6 months (equivalent to 180 days) from the date of issue.

Consequently, the appellant prayed for the following:

- i. Respondent to re-evaluate all tenders afresh so as to reach a lawful decision
- ii. Respondent to pay the Appellant a sum of Tsh. 120,000/= being cost of the Appeal.

The Respondent in reply, submitted that; a requirement that a tenderer states the Bid Validity period of 120 days was stipulated in the Tender Document. Therefore Appellant's complaints were baseless and devoid of any merit.

During the hearing of the appeal on the 25th March, 2014 and before the Appellant could submit grounds of appeal, the Respondent conceded to the appellant's complaints and requested to revisit and re evaluate the tender. The Respondent admitted that contrary to the decision with respect to the appellant's tender, the appellant had in fact submitted the 120 days bid validity period as required by the tender document.

In reply thereto, the appellant's advocate requested the Authority to grant them the following costs:

- Legal fees Tshs 3,000,000/=
- Stationery Cost Tshs 100,000/=

- Transport Costs; that is taxi fares from Mbezi Beach office of the appellant to Sukari House to pursue the case and taxi fare of the advocate
- Filing Fees Tshs. 120,000/=

The Respondent who was also represented by an advocate, substantially agreed with the appellant, save for two items;

- That, costs incurred be substantiated by receipts, except stationery cost which is not disputed at all.
- That the Official address of the appellant in this case is Makunganya Street in downtown Dar es Salaam and not Mbezi Beach as claimed by the Appellant.

The Respondent's advocate also requested the Authority when deliberating on the issue of cost, to take into consideration the fact that the Respondent had conceded to the appeal thus had not wasted the Authority's time.

Following the Respondent's concession, the Authority hastens to quash the Respondent's decision (award and suspension) and order the Respondent to re evaluate the tender's afresh in accordance with the law.

On the prayer for costs, the Authority, in its discretion, grants the following;

- Legal fees Tshs 2,000,000/=
- Stationery Cost Tshs 100,000/=
- Transport Cost Tshs 20,000/=
- Filling Fees Tshs 120,000/=

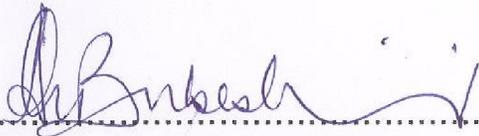
The total amount awarded to the Appellant for cost is thus T.shs 2,240,000/=

The Authority so orders.

The appellant has the right to execute this decision in terms of S.98 (8) of the Public Procurement Act, CAP 410.

Rights to Judicial review as per section 101 of PPA/ 2011 explained to parties.

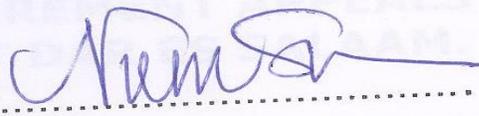
Decision delivered in the presence of the Appellant and the Respondent this 31st March, 2014.

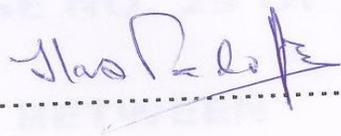


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JUDGE (rtd) A. BUBESHI
CHAIRPERSON

MEMBERS:

1. N.S. INYANGETE .....

2. H.S. MADOFFE .....

3. R. LULABUKA .....