

IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY
AT DAR ES SALAAM

APPEAL CASE NO. 2 OF 2016-17.

BETWEEN

M/S GODSAS GROUP LIMITED.....APPELLANT

AND

MASASI TOWN COUNCILRESPONDENT

RULING

CORAM

1. Hon. Vincent K.D Lyimo, J. (rtd)- Chairman
2. Mrs. Rosemary A. Lulabuka- -Member
3. Eng. Francis T. Marmo- -Member
4. Mr. Ole-MbilleKissioki- -Secretary

SECRETARIAT

1. Ms. Florida R. Mapunda - Senior Legal Officer
2. Ms. Violet S. Limilabo - -Legal Officer
3. Mr. Hamisi O. Tika - Legal Officer

APPELLANT & RESPONDENT – All were absent.

This Appeal was lodged by M/s GODSAS GROUP LIMITED (hereinafter referred to as "the Appellant") against Masasi Town Council (hereinafter referred to as "the Respondent").

The said Appeal is in respect of Tender No. LGA/135/2015-2016/02, 03 and 07 respectively for the Routine Maintenance of Lisekese-Nanyindwa, Mtakuja-Mraushi, Mtakuja-Chibali, Masasi-Nangose Juu Roads (hereinafter referred to as "the tender").

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

The Respondent invited various tenderers to submit their bids for the above tender, the subject matter of this appeal.

The said tender was conducted through National Competitive Tendering Procedures specified in Public Procurement Regulations Government Notice No. 446 of 2013) (hereinafter referred to as "GN. 446") and the deadline for the submission of tenders was on 15th April 2016. As the tender had been divided into three separate lots, six tenders were received for Lot No.2, eight tenders for Lot Nos.3 and Lot 7 respectively.

On 22nd July, 2016, it came to the knowledge of the Appellant that the Respondent had already awarded the contract to M/s M.R. Building & Civil Engineering Co. Limited vide his letter with Ref. No. MTC/CT.6/1/74 dated 21st July 2016.

On becoming aware of the award of contract, on 26th July 2016, the Appellant wrote to the Respondent's Accounting Officer disputing the awards made. The Respondent did not reply to the said letter. On 9th August 2016, the Appellant reminded the Respondent of his complaint and urged her to respond. On 10th August 2016, the Appellant received three letters from the Respondent from which he learned that his tenders for all lots were unsuccessful. The reasons for being unsuccessful were not disclosed.

On 19th August 2016, the Appellant received another letter from the Respondent, informing him that his tenders were unsuccessful because they did not meet specific requirements provided for under Clause 5 of the Instructions to Tenderers (hereinafter referred to as the ITT)

Aggrieved, the Appellant on 23rd August 2016, lodged his Appeal to this Appeals Authority alleging the following-

- That, the Respondent had contravened Clause 38.1 of the ITT for his failure to issue Notice of Intention to award the contract to bidders who participated in the tender process. Hence, denied them the right to seek administrative review.
- That, Respondent behaved coercive (*sic*) and collusive manner in the tender process with intention to impair or harm the Appellant. This is verified by the Respondent's act to send letters to the Appellant fourteen days after they had been written.

- That, the Respondent contravened the requirement of Clause 38.4 of the ITT for failure to provide reasons for the disqualification of the Appellant.
- That, the latter reasons given by the Respondent to disqualify his tenders is misleading, as the said Clause 5 of the ITT relates to cost of tender. In no way the said Clause could have been the factor to disqualify them.

Finally, the Appellant prayed for the following orders/reliefs-

- 1.Revoke the Respondent's award of contracts to the awarded bidders for all lots and order for re-evaluation of the tenders in accordance with the law;
- 2.The Appeals Authority give to the Respondent clear instructions on how evaluation process should be done in the future;
- 3.Order the Respondent to the pay the Appellant TZS. 200,000/- being Appeal filing fees;
- 4.Order the Respondent to pay the Appellant TZS. 500,000/-being costs for transport and accommodation for prosecuting the Appeal;
- 5.Any other remedies which this Appeals Authority may deem just and fit to grant.

The Appeals Authority by its letter with Ref. No. PPAA/APPEALS/02/02/2016-17 dated 25th August 2016, informed the Respondent about the Appeal so lodged, through expedited mail services (EMS) and its official e-mail address namely; info@masasitc.go.tz. requiring the Respondent amongst other things, to submit replies to the grounds of the Appeal, pursuant to

Section 97(4) of the Public Procurement Act(hereinafter referred as the Act). The Appeals Authority's letter also required the Respondent to submit the various documents listed under the said section for ease of determination of the Appeal. These included:-

- i. copies of tender advertisements;
- ii. Tenders submitted by all tenderers who took part in the tender;
- iii. original Tender Document in which Terms Of Reference were provided;
- iv. A list of tenderers who participated in the tender in the dispute;
- v. Evaluation report; Minutes of all Tender Board meetings;
- vi. Notification of award and a copy of the contract if it has been signed.

The secretariat to the Appeals Authority made relentless efforts to have the Respondent file replies to the Appeal and submit relevant documents. Rather than file the replies to the Statement of Appeal, the Masasi Town Director promised to forward the replies and the relevant documents. However, she submitted a mere statement of reply which was neither signed nor attested as required. Furthermore, no documents were submitted as promised.

Since the Appeal has to be determined in line with the appeals review mechanism under the Act and Regulations (that is 45 days from the date of filing), the secretariat had no option other than to issue the relevant notice of hearing pursuant to Rule 18(2) of GN. 411 of 2013. The notices were dully served on both the Appellant

and the Respondent to appear before the Appeals Authority on 27th September, 2016 at noon. On the hearing date, neither the Appellant nor the Respondent entered appearance and none of them offered any reason for failure to do so. As both parties were absent, the Appeals Authority perused the documents which had been filed by the Appellant and observed as follows:-

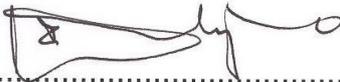
- i. The Appellant lodged his complaint to the Respondent on 26th July 2016. Therefore, the Accounting Officer ought to have delivered his written decision on or before 4th August 2016, which he did not. Appellant lodged his Appeal to this Appeals Authority on 23rd August 2016. From this sequence of event, the Appeal to this Appeals Authority ought to have been lodged on or before 16th August 2016. That is to say it was lodged out of time.
- ii. As the Appellant had filed the Appeal out time and without leave to do so, it meant that the Appeal ought to have been dismissed for being filed out of time and that should have marked the end of the matter before the Appeals Authority in terms of Section 97 (2) (a) of the Act.

As indicated earlier that the Respondent refused and or neglected to file the statutory statement of defense as required. The refusal to file the relevant documents required by law has denied the Appeals Authority the opportunity to conduct the review of the procurement process to verify the validity of the procurement contracts. Under

the circumstances, the contracts entered between the Respondent and the proposed successful bidders cannot be vouchsafed.

On basis of the above findings, the Appeals Authority dismisses the Appeal for being filed out of time and without leave to do so. Further, the Appeals Authority finds it appropriate to require relevant authorities to conduct procurement audit in respect of the said contract in which it has been reported that the Respondent refused to submit the relevant documents. Each party to bear own costs.

This Ruling is delivered in the absence of the Appellant as well as the Respondent this 28th September 2016.



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JUDGE (rtd) V.K.D. LYIMO
CHAIRMAN

MEMBERS:

1. MRS. R. A. LULABUKA 

2. ENG. F.T.MARMO 