

IN THE  
PUBLIC PROCUREMENT APPEALS AUTHORITY  
AT DAR ES SALAAM

APPEAL CASE NO. 136 OF 2012

BETWEEN

M/S KALAMAZOO SECURE  
SOLUTIONS LIMITED.....APPELLANT

AND

MINISTRY OF AGRICULTURE FOOD SECURITY  
AND COOPERATIVES.....RESPONDENT

ORDER

CORAM:

1. Hon. A.G. Bubeshi, J. (rtd) - Chairperson
2. Mr. F.T. Marmo - Member
3. Mr. H.S. Madoffe - Member
4. Mr. K.M. Msita - Member
5. Ms. F.R. Mapunda -Ag.Executive Secretary

SECRETARIAT:

1. Mr. H.O. Tika - Legal Officer
2. Ms. V.S. Limilabo - Legal Officer

FOR THE APPELLANT:

Absent though on notice

FOR THE RESPONDENT:

1. Ms. Theresia Mbelle – Legal Officer
2. Mr. Charles Mpaka – Legal Officer
3. Mr. Sunga Dema – Supplies Officer
4. Mr. Benedict Mbatia – Supplies Officer

FOR OBSERVERS:

1. Mr. James Karinge – Regional Sales and Marketing Manager, Tall Security UK.
2. Mr. Felician Muhandiki – Regional Director, Smith and Ouzman.

The appeal at hand was lodged by M/s KALAMAZOO SECURE SOLUTIONS LIMITED (hereinafter to be referred to as "the Appellant") against the MINISTRY OF AGRICULTURE FOOD SECURITY AND COOPERATIVES (hereinafter to be referred to as "the Respondent").

The said Appeal is in respect of Tender No. ME/012/2012-13/HQ/G/04 for Printing of Food Crops Input Vouchers (hereinafter to be referred to as "the tender").

According to the documents submitted to the Authority, the facts of the Appeal may be summarized as follows:

The tender under Appeal was publicly invited through the Ministry's website and the Daily News paper of 6<sup>th</sup> and 7<sup>th</sup> August, 2012.

The deadline for submission of tenders was set for 6<sup>th</sup> September, 2012 and the following seven tenders were submitted.

S/ No	Tenderer's Name	Quoted price
1	M/s Kalamazoo Solution Ltd	GBP 182,275.68 CIP-Dar-MAFC-Kilimo
2	M/s Smith & Ouzman	GBP 206,411.04 CIP OR GBP 319,978.56 DDP-Kilimo Dar.
3	M/s TALL Security Print Ltd	GBP 328,952.52 CIP- Dar Airport OR GBP 485,204.96
4	M/s kadimah Trading Corporation (Pty) Ltd	USD 448,943.40 CIP- DAR-MARC-Kilimo I
5	M/s Universal Print Group(Pty) Ltd	ZAR 3,813, 854 CIP- Dar-MAFC- Kilimo I
6	M/s Boss Ltd	USD 414,470 CIP- Dar-MAFC-Kilimo I
7	M/s Security Print (EA) Ltd	USD 663,168 CIP- DAR-MAFC-Kilimo I

The said tenders were subjected to evaluation, whereby, the Evaluation Committee recommended the award to be made to M/s Smith & Ouzman at a cost of GBP 206,411.04 which was converted to Tshs. 517,658,247.21; after they had been found to be substantially responsive to the tender requirements.

The Tender Board at its meeting held on 24<sup>th</sup> September, 2012, approved the award of tender to M/s Smith & Ouzman at a GBP 206,411.04.

On 17<sup>th</sup> October, 2012, the Respondent vide a letter referenced CEA 19/93/21/04, communicated the award of tender to the Successful Tenderer.

On 12<sup>th</sup> November, 2012 the Respondent communicated the tender results to the unsuccessful tenderers vide a letter referenced CEA 19/ 93/ 04.

On the 13<sup>th</sup> November, 2012, the Appellant wrote a letter with no reference number to the Respondent requesting to be informed about the reason for their disqualification.

Having not received any reply from the Respondent, the Appellant, on 19<sup>th</sup> November, 2012, lodged their Appeal to the Public Procurement Appeal Authority (hereinafter to be referred to as the Authority).

## SUBMISSIONS BY THE APPELLANT

The Appellant's arguments may be summarized as follows:

That, the Appellant was the previous supplier to the Respondent on the similar contract and their Company was recommended to be the best evaluated tenderer for the year 2011-2012.

That, an acceptance letter was issued for the goods supplied for 2011-2012 to indicate they had met all the terms of the contract.

That, at the tender opening date, they were the lowest tenderer by 13%.

That, no discrepancies were noted in their tender during the tender opening, because prices, INCOTERM, Power of Attorney, Bid Securities and samples were all scrutinized.

That, there were issues raised about the Power of Attorney and the price submitted by the successful tenderer; to the contrary, the award was made to them.

That, they did not receive any notice with regard to their Tender Document not being substantially responsive.

That, they did not receive any letter seeking clarification about their tender.

## REPLIES BY THE RESPONDENT

The Respondent's arguments were preceded by a Preliminary Objection to wit;

- a) That, the Notice of Intention to Appeal was incompetent for being signed by a person who was not legally authorized by the Tenderer and was not copied to other tenderers who participated in the tender contrary to Rule 6(2) and (3) of the Public Procurement Appeals Rules, GN. 205 of 2005 (hereinafter to be referred to as PPAA Rules).
  
- b) That, the Appeal was defective for failure to comply with Sections 78, 79, 80, 81, 82, 83,

and 84 of the Public Procurement Act No. 21 of 2004 (hereinafter to be referred to as Act) read together with Regulations 109 to 114 of the Public Procurement (Goods, Works, Non-Consultant Services and Disposal of Public Assets by Tender) Government Notice No. 97 of 2005 (hereinafter to be referred to as "GN. No. 97/2005") with respect to dispute settlement in tender process.

- c) That, the Appeal was incompetent and misconceived for failure to indicate relief or remedy sought as required under Rule 8(1) (c) of the PPAA Rules.

Without prejudice to the above objection, the Respondent's reply may be summarized as follows:

That, according to the Notice of Intention to Appeal, the Appellant seems to be aggrieved by the Respondent's decision to award the Contract to M/s Smith & Ouzman Ltd as notified to them through a letter dated 12<sup>th</sup>



November, 2012. However, while the Notice of Appeal appears to have been lodged on November 15, 2012, the statement of Appeal is dated 13<sup>th</sup> November, 2012. Thus, the notice of Appeal was lodged two days after the Statement of Appeal was lodged.

That, the Appellant was evaluated as lowest bidder for the year 2011/2011 (sic) on Tender No. ME 012/2010-11/G/55 for printing of Food Crop Input Vouchers. However, the tender under Appeal was different as indicated in their Notice of Intention to Appeal; the tender in dispute is Tender No. ME 012/2012-13/HQ/G/04 which was evaluated separately.

That, the tender in dispute is for the year 2012/2013 and was invited through International Competitive Tendering and had nothing to do with tender No. ME012/2010-11/G/55 for 2011/2012. Furthermore, it should be noted that, the alleged tender was advertised in public and was not specifically intended for the Appellant alone as contended by them under paragraph 2(a) of the Statement of Appeal.

That, the letter of acceptance issued to indicate the success of a contract by 100% was for the year 2011/2012 regarding tender No. ME 012/2010-11/G/55 and not the tender under Appeal.

That, it is true that the Appellant's bid price was the lowest among all during the tender opening, but that was not the criteria for award of the tender. Following evaluation, the Appellant's tender was found to be not substantially responsive to the requirements of the Tender Document. Hence, their tender was rejected.

That, during tender opening, all documents mentioned in paragraph 2(d) of the Statement of Appeal were scrutinized in the presence of Tenderers who attended the said opening. However, during evaluation, it was noted that, the Appellant's Bid Security was to expire on 20<sup>th</sup> January, 2013 instead of 31<sup>st</sup> January, 2013 as required under Clause 21.2(f) of the Instruction to Bidders (ITB).

That, as the tendering process was still in progress, the Respondent could not issue any notice with respect of unresponsive tenders until 12<sup>th</sup> November, 2012 after the completion of all tendering process.

That, since everything was clear and concise on the Appellant's tender, there was no need for the Respondent to seek clarification from them.

That, the Appellant's tender was rejected for failure to comply with a tender requirement as provided for in the Tender Document.

That, the Respondent invited the Authority to take notice that, pursuant to paragraph 3 and 4 of the Statement of Appeal, the Appellant did not intend to rely upon any document or witness.

Finally, the Respondent prayed that, the Appeal be dismissed with costs for lack of merit.

## ORDER TO DISMISS THE APPEAL

On the date set for hearing the Respondent and two observers appeared before this Authority and there was no reason at all to justify the absence of the Appellant.

According to Rule 17 of the Public Procurement Appeals Rules GN No. 205/2012, the Authority has been vested with powers of dismissing an Appeal in a situation where only the Respondent appears and the Appellant does not appear without notice. The said rule states as follows;

“Where the respondent appears and the Appellant does not appear when the Appeal is called for hearing the Public Procurement Appeals Authority shall make an order dismissing the appeal”. (Emphasis supplied)

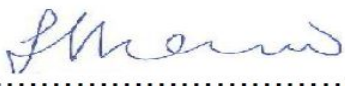

Based on the above quoted provision, the Authority dismissed the Appeal for non appearance of the Appellant with no order as to costs.

This Order is made this 12<sup>th</sup> day of December, 2012.



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**JUDGE (rtd) A. BUBESHI**  
**CHAIRPERSON**

MEMBERS:

1. MR. F. T. MARMO.....
2. MR. H. S. MADOFFE.....
3. MR. K.M. MSITA.....