

**IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY
AT DAR ES SALAAM
APPEAL CASE NO. 6 OF 2013-14**

BETWEEN

**M/S TRADE AFRICA NETWORK
TANZANIA LIMITED.....APPELLANT**

AND

**SINGIDA DISTRICT
COUNCIL.....RESPONDENT**

RULING

CORAM:

- | | |
|---------------------------------|----------------|
| 1. Hon. A. G. Bubeshi, J. (rtd) | -Chairperson |
| 2. Mr. Kesogukewe M. Msita | -Member |
| 3. Mr. Haruni S. Madoffe | -Member |
| 4. Ms. Rosemary A. Lulabuka | - Member |
| 5. Mr. Ole- Mbille Kissioki | - Ag.Secretary |

SECRETARIAT

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

FOR THE APPELLANT:

1. Mr. Deusdedit Kizito Stephen – Country Coordinator
2. Mr. Balthazar Kitundu– Advisor

FOR THE RESPONDENT:

1. Mr. Samson Male – Legal Officer
2. Mr. Msafiri Thomas – Procurement Officer

This Ruling was scheduled for delivery today 29th of August, 2013, and we proceed to deliver it.

The Appeal at hand was lodged by **M/S TRADE AFRICA NETWORK TANZANIA LIMITED** (hereinafter referred to as "**the Appellant**") against the **SINGIDA DISTRICT COUNCIL** (hereinafter referred to as "**the Respondent**").

The said Appeal is in respect of Tender **NO. PMO/MIVARF/01/2012 for Strengthening of Producers, Processors and Marketing Associations** (hereinafter referred to as "**the tender**").

According to the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Authority**") as well as oral submissions by parties during the hearing, the facts of the Appeal may be summarized as follows:

The Respondent vide the following news papers; the Guardian dated 8th and 16th August 2012, the Daily News dated 15th and 16th August, 2012, Jambo Leo dated 10th and 13th August, 2012 and Majira dated 11th and 13th August 2012, invited consultants interested in providing

consultancy services for the tender under appeal to submit their Expression of Interest (hereinafter referred to as “**the EOI**”).

The said tender was divided into two categories; one was for consultancy services for Producer Empowerment and Market Linkages (hereinafter referred to as **PEML**). The second was for Grassroots Microfinance Institutions (hereinafter referred to as **GMFIs**). The said Appeal is in respect of the former tender.

The deadline for submission of the EOI was set for 24th August 2012. Twenty one applications including that of the Appellant were received.

Five firms were shortlisted thereafter as listed hereunder:

- i) M/s Enterprise Development Centre
- ii) M/s Faida Market Link
- iii) M/s Rural Urban Development Initiatives
- iv) M/s Charter Consults Ltd
- v) M/s Trade Africa Network (T) Ltd

On 31st August, 2012, the Respondent vide an e-mail asked for Request for Proposals (hereinafter referred to as "**the RFP**") from the shortlisted firms.

The deadline for submission of Technical Proposals was set for 2nd October, 2012, whereby three shortlisted firms submitted their proposals namely;

- i) M/s Enterprise Development Centre
- ii) M/s Rural Urban Development Initiatives
- iii) M/s Trade Africa Network (T) Ltd

The Technical Proposals were subjected to Detailed Evaluation. At that stage, one firm M/s Rural Urban Development Initiatives was disqualified for failure to score the minimum marks of 80 points.

The remaining firms were ranked as follows.

S/No	Firm's Name	Total	Ranking
1	M/s Trade Africa Network (T) Ltd	88.00	1

2	Enterprises Development Centre	82.25	2
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The Evaluation Committee recommended the above mentioned tenderers to be invited for the opening of the Financial Proposals and the same was approved by the Tender Board meeting held on 16th October, 2012.

The opening of the Financial Proposals took place on 23rd October, 2012, whereby the readout prices quoted by the tenderers were as follows:

S/ N	Firm's Name	Read Out Price Tshs	Price after corrections Tshs	Mark s out of 100
1	M/s Enterprises Development Centre	114,931,750/-	115,107,750/-	100
2	M/s Trade Africa Network (T) Ltd	165, 848,000/-	165,848,000/-	69.4

The Evaluation Committee combined the scores of the Technical and Financial Proposals and they ranked the tenderers as follows:

S/N	Firm's Name	Technical Marks out of 80 points	Financial Marks out of 20 points	Total Marks out of 100	Ranking
1	M/s Enterprises Development Centre	65.60	20.00	85.60	2
2	M/s Trade Africa Network (T) Ltd	72.00	13.88	85.88	1

Having completed the evaluation process the Evaluation Committee recommended the award of the tender for PEML to M/s Trade Africa Network (T) Ltd at a contract price of Tshs 165,848,000/-

On 7th December, 2012, the Respondent vide a letter referenced C/SDC/K.18/PART 'A'/8, invited the Appellant

to attend a negotiation meeting which was held on 13th and 14th December, 2012.

It was agreed in that meeting, under agenda No. 3, amongst other things, that by 1st January, 2013, the service provider for PEML should be on site for signing of the contract ready for collection of baseline data. It was further agreed that, the District Executive Director should provide an office for both service providers equipped with the necessary office equipment as per the list submitted by the service provider and agreed by both parties.

On 7th January, 2013, the Respondent vide a letter referenced SDC/DCO/VOL.I/38 informed five Ward Executive Officers, that Singida District Council in collaboration with the African Development Bank (hereinafter referred to **as ADB**) together with the Appellant intended to have a 3 years project of PEML. Thus, they should be assisted to obtain information of 35 groups which were intended to work with the Appellant.

The Tender Board, at its meeting held on 9th January, 2013, approved the award of tender to the Appellant at a negotiated contract sum of Tshs 96,000,000/-

The Respondent vide a letter referenced SDC/D.1/55/PART 'C'/3 dated 9th January, 2013 informed the Appellant on an extension of Proposal Validity Period for an indefinite period of time. On the same day, the National Programme Coordinator, vide a letter referenced MIVARF /HQ/RAS/GC/1/Vol.1/24 informed the Respondent that the contract proceedings should be suspended until further instructions due to the delay to get permission to enter into contract with the Appellant which was expected to be obtained by the end of December 2012.

On 3rd June, 2013, the National Programme Coordinator vide a letter referenced MIVARF/ RAS/ GC.1/Vol.1/29 informed the Respondent that the engagement of M/s Trade Africa Network (T) Ltd was subject to internal review by IFAD and approval (No Objection) before contract award.

The Respondent vide a letter referenced SDC/D-1/55/PART 'C'/07 dated 20th June, 2013, informed the Appellant that, IFAD had declined to give a No Objection for award of the tender to them and that there will be a retendering in July, 2013. The said letter was received by the Appellant on 6th July, 2013.

Being dissatisfied with the Respondent's act of intending to re-tender, the Appellant on 19th July 2013, lodged their Appeal to this Authority.

During the hearing of this Appeal, the Authority on its own motion ordered the parties to argue on whether or not it has the jurisdiction to entertain the Appeal at hand. In view of this order, and as a matter of procedure, the Authority was obliged to resolve this issue before, if at all, addressing on the merits thereof.

THE APPELLANT'S SUBMISSIONS

The Appellant's submissions on the Authority's jurisdiction were as follows;

That, they believe that the Authority has the jurisdiction to hear and determine this Appeal on the ground that, the Respondent did not raise any Preliminary Objection when they lodged their statement of reply.

That, since the Respondent invited them to the negotiation meeting; and since the Respondent instructed them to conduct a baseline survey and submit an inception report, the Appellant is of the view that they had an oral agreement from the Respondent. Thus, they presumed to have been awarded the tender by the Respondent. Thus, a written agreement was to be formalised later.

That, by implication, the award was already communicated to them. Thus, this Authority has powers to entertain their Appeal.

That, they were not informed by the Respondent that the award of tender was subject to approval (No Objection) by IFAD.

That, it was until 6th July, 2013, when they received a letter from the Respondent which informed them that the No Objection has not been given by IFAD and that the tender will be subject to retendering in July 2013.

That, they lodged their complaint to the Public Procurement Regulatory Authority (hereinafter referred to as "**PPRA**"). However, they were verbally advised to lodge the same to this Authority. In their opinion, this entailed that this Authority has the jurisdiction to entertain their Appeal. Thus, the Appeal be heard on merits.

THE RESPONDENT'S REPLIES

The Respondent's replies on the jurisdiction of the Authority may be summarized as follows;

That, the Appellant's complaint is based on the contract and not on the procurement process; thus, the Authority does not have jurisdiction to entertain it. The Appellant

ought to have lodged their complaint in an ordinary court of law.

That, the Appellant has not shown any written notification of award or a signed contract before the Authority to prove that there was a formal contract entered between the parties.

That, Sections 79 (2) (c) (d) (e) and 54(2) of the Public Procurement Act No. 21 of 2004 (hereinafter referred to as "**the Act**"), provide clearly on matters which are not subject to review, amongst them, being the decision of the procuring entity to reject all tenders.

Finally, the Respondent requested the Authority to the strike out the Appeal.

ANALYSIS BY THE AUTHORITY

Having gone through the documents submitted and having heard the oral submissions by parties in relation to the issue of jurisdiction raised by the Authority, *suo*

motto, the Authority resolved it by framing the following issue;

- **Whether the Authority has jurisdiction to entertain the Appeal at hand.**

Having identified the issue, the Authority proceeded to resolve it as follows:

As clearly discernable from arguments by parties there are conflicting views about the jurisdiction of this Authority in this Appeal. In resolving such conflicting arguments, the Authority deemed it proper to revisit the documents submitted and the applicable law. In the course of doing so, the Authority noted that, there was no written notification of award made by the Respondent to the Appellant. When asked by the Members of the Authority whether there was a written communication showing that the tender had been awarded to them, the Appellant contended that they had an oral agreement with the Respondent. They contended further that, the conduct by the Respondent in as much as the amongst others they ordered the Appellant to conduct a baseline

data collection and submit an Inception Report, amounted to an official notification to them.

The Authority revisited Section 55 (2) and (3) of the Act and noted that, Notification of Award must be in writing and signed by an authorized officer as provided hereunder;

S.55 (2) "The procuring entity on whose behalf the tenders, offers or proposals were invited shall be notified by the tender board of the tender board's acceptance of the tender, offer, or proposal and the notice of acceptance shall be given by the procuring entity promptly to the supplier, contractor or consultant who submitted the tender, offer or proposal"

(3) "The notification referred to in the subsection 2 of this section **shall be in writing and signed by the authorized officers**". (Emphasis added)

From the above quoted provisions, the Authority is of the settled view that, there was no procurement contract in place as contended by the Appellant. That being the case,

the Appellant ought to have followed the review procedures provided for under Sections, 79, 80, 81 and 82 of the Act. These provisions in a nutshell, require them to lodge their complaint(s) to the Accounting Officer first then to PPRA and finally to this Authority.

The Authority is of the further view that, even if there were a contract between the parties, as claimed by the Appellant they ought to have lodged their complaint to the appropriate authority vested with powers to entertain disputes emanating from breach of contracts. That is to say, the ordinary courts of law.

That said, the Authority does not concur with the Appellant's contention that they had a valid agreement with the Respondent.

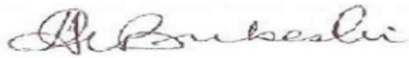
From the above findings, the Authority is of the settled view that, there was no contract between the parties.

In view of the above findings, the Authority's conclusion with respect to this issue is that, the Authority has no jurisdiction to entertain the Appeal at hand.

Accordingly, the Appeal filed is hereby rejected and the Authority sees no basis to proceed with the merits thereof. Thus, having rejected the Appeal, the same is ordered struck out and each party to bear their own costs.

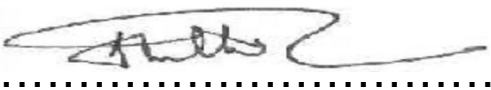
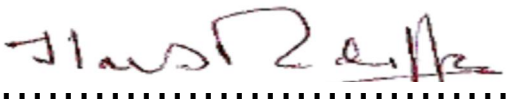
Right of Judicial Review as per Section 85 of the PPA/2004 explained to parties.

Ruling delivered in the presence of the Appellant and the Respondent this 29th August, 2013.



JUDGE (rtd) A. BUBESHI
CHAIRPERSON

MEMBERS:

1. MR. K. M. MSITA.....
2. MR. H.S. MADOFFE.....
3. MRS. R. A. LULABUKA.....