

**IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY
AT DAR ES SALAAM
APPEAL CASE NO. 08 OF 2019-20**

BETWEEN

M/S PLASCO LIMITEDAPPELLANT

AND

**BABATI URBAN WATER SUPPLY AND SANITATION
AUTHORITYRESPONDENT**

DECISION

CORAM

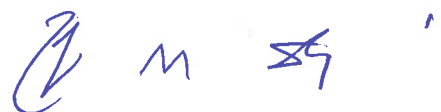
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| 1. Hon. Justice (rtd) Souda Mjasiri | - Chairperson |
| 2. Dr. Leonada Mwangi | - Member |
| 3. Eng. Stephen Makigo | - Member |
| 4. Ms. Florida Mapunda | - Ag. Secretary |

SECRETARIAT

- | | |
|------------------------|-----------------|
| 1. Ms. Violet Limilabo | - Legal Officer |
| 2. Mr. Hamisi Tika | - Legal Officer |

FOR THE APPELLANT

- | | |
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| 1. Mr. Gilbert Sawe | - Advocate, Zenith Attorneys |
| 2. Ms. Edith James | - Sales and Marketing Manager |
| 3. Mr. Shabani Kassim | - Stores Assistant |



FOR THE RESPONDENT

1. Mr. Godwin Haama - Head of Procurement
Management Unit
2. Mr. Tantau Moshi - Project Engineer

This Appeal was lodged by M/S Plasco Limited (hereinafter referred to as "**the Appellant**") against Babati Urban Water Supply and Sanitation Authority commonly known by its acronym, BAWASA (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. AE-030/2019-20/G/01 for Supply of Water Pipes for Mbulu Town, Katesh and Mbulu Rural Water Supply Immediate Works Projects (hereinafter referred to as "**the Tender**").

The Tender was conducted through Restrictive National Competitive procedures specified in the Public Procurement Act of 2011 as amended (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, Government Notices No. 446 of 2013 and No.333 of 2016 (hereinafter referred to as "**the Regulations**").

After going through the record of Appeal submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**"), the Appeal may be summarized as follows:-

The Respondent vide a letter dated 10th September 2019, invited three bidders namely; M/s Pipes Industries Company Ltd, M/s Plasco Ltd and M/s Simba Industries Company Ltd to participate in the Tender. The deadline



for submission of tenders was set for 17th September 2019, whereby all three bidders responded.

The Tenders were then subjected to evaluation which was conducted into three stages namely; preliminary, detailed and post-qualification evaluation. At the preliminary evaluation stage, all three bidders were found to have complied with the requirements of the Tender Document, thus they were subjected to detailed evaluation. During that process the tender submitted by M/s Pipes Industries Company Ltd was found with arithmetic error which was corrected. The respective bidder was informed about the correction made and accepted it. The tenders were then ranked according to their evaluated prices. M/s Pipes Industries Company Ltd emerged to be the first ranked bidder and was subjected to post-qualification. After completion of the post-qualification process and the firm being found to be successful, the Evaluation Committee recommended award of the Tender to it at a contract price of TZS. 1,245,834,545.60/- VAT inclusive. The Tender Board meeting held on 28th September 2019 approved the award as recommended.

On 30th September 2019, the Respondent issued the Notice of Intention to Award to all bidders. The Notice informed the Appellant that the Respondent intended to award the Tender to M/s Pipes Industries Company Ltd. The Notice also informed the Appellant that after computation of arithmetic errors its bid was found to be not the lowest evaluated, hence it did not qualify for the award of the Tender.

Dissatisfied, on 1st October 2019, the Appellant applied for administrative review to the Respondent's Accounting Officer challenging its disqualification from the Tender process. On the 2nd October 2019, the Respondent issued its decision which dismissed the Appellant's complaint. Dissatisfied further, on 8th October 2019, the Appellant filed this Appeal.

SUBMISSIONS BY THE APPELLANT

The Appellant's grounds of Appeal may be summarised as follows:-

1. That, the Appellant disputed the validity of the arithmetic correction done to the tender of M/s Pipes Industries Company Ltd by the Respondent. During the Tender opening the price of M/s Pipes Industries Company Ltd was higher compared to the price quoted by the Appellant. When the notice of intention to award was issued it indicated that the price of M/s Pipes Industries Company Ltd was lower than that of the Appellant. The Respondent claimed to have corrected the price of M/s Pipes Industries Company Ltd as there were arithmetic errors. The Appellant disputed such correction as it failed to ascertain how the same was done to the extent that it led the price of M/s Pipes Industries Company Ltd to be slightly lower than the price quoted by the Appellant. The Appellant added that, it had sought to be informed the validity of the said correction through application for administrative review, however, the Respondent failed to provide clarification in that regard.



2. That, the Appellant doubted the procedures which were used to ensure that pages within the submitted bids were not changed or altered in anyway after the tenders were opened. The Appellant submitted that after the tender opening it was not privy to the Respondent's internal process. Thus, it suspected that there was foul play in relation to the correction of errors.
3. Finally, the Appellant prayed that the Respondent be ordered to award the Tender to it, since it had the lowest quoted price and its bid has no arithmetic errors.

REPLY BY THE RESPONDENT

The Respondent's reply to the grounds of Appeal may be summarised as follows:-

1. That, the disputed Tender process was conducted pursuant to the Act and its Regulation from the tender opening stage, evaluation and all other steps until notification of award.
2. That, the correction of arithmetic errors was done during the evaluation process to ascertain the correctness of the prices quoted by bidders pursuant to Clauses 30.1 and 30.2 of the Instruction to Bidders (ITB). The tender by M/s Pipes Industries Company Ltd was found with an error which was corrected and the bidder accepted the correction after it was informed about it. M/s Pipes Industries Company Ltd quoted price on the date of Tender opening was TZS.



1,312,773,281.11; however, after the correction of arithmetic errors the said price dropped to TZS. 1,245,834,545.60 VAT inclusive.

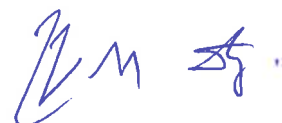
3. That, M/s Pipes Industries Company Ltd was proposed for award of the tender after it was found to be substantially responsive to the tender requirement and offered the lowest evaluated bid price.
4. That, the Appellant's tender had no arithmetic errors, thus there was no correction made to it.

Finally, the Respondent prayed for the following orders:-

- i. The tender be awarded to M/s Pipes Industries Company Ltd, since it was the lowest evaluated bidder;
- ii. That, the bid by M/s Pipes Industries Company Ltd was found with arithmetic errors which was corrected and after the correction, the bid had the lowest price compared to the Appellant; and
- iii. A declaration that the Appellant was ranked the second after evaluation process.

During the hearing parties agreed on the following issues which were also approved by the Members of the Appeals Authority:-

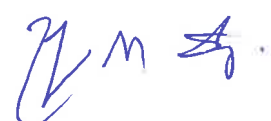
- 1. Whether the Appellant's disqualification was justified;**
and
- 2. What relief(s), if any, are the parties entitled to**



In the course of reviewing the documents submitted by the parties, the Appeals Authority observed that the Appellant's arguments centered on the Respondent's conduct with regard to correction of arithmetic errors. The Appellant suspected that there was foul play as there was no mechanism to ensure that pages of the submitted bids were not changed. During the hearing Members of the Appeals Authority asked the parties to explain if there were any measures which were taken during the tender opening to ensure that the submitted information would not be tempered with, for instance if the documents presented were initialled by the Bidder's representative and the Respondent.

In response to the Appeals Authority's question the Appellant submitted that, no measures were taken during the tender opening to ensure that the submitted documents would not be tempered with. The Appellant added that none of the documents were initialled. The Appellant submitted that given the circumstances, it was not easy to establish that some pages of M/s Pipes Industries Company Ltd bid documents might have been changed. As this was the basis of the Appellant's appeal, the Counsel for the Appellant readily conceded that it could not be established that the Appellant's disqualification was justified or not. In view of the prevailing circumstances the Appellant prayed for the dismissal of the appeal.

The Respondent on its part, readily conceded that no measures were taken to ensure that the submitted bids would not be tempered with and the relevant bids were not initialled during the tender opening meeting. The Respondent submitted that despite the fact that none of the documents



was initialled; the evaluation process was conducted diligently in observance of all ethical issues. Given the circumstances that the Appellant failed to substantiate that the bid of M/s Pipes Industries Company Ltd was tempered with, the Respondent is in agreement with the Appellant's prayer that the Appeal be dismissed.

ANALYSIS BY THE APPEALS AUTHORITY

Having revisited the documents submitted before it, the Appeals Authority observed that Regulation 207(2) of GN No. 446 of 2013 and Clause 30.1 and 30.2 of the ITB allows correction of arithmetic errors to be done during the evaluation process. The said provisions allows correction of arithmetic errors to be done if, there was a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and the quantity, and/or if there is an error in the total amount corresponding to the addition made. A correction of error is also allowed where there is a discrepancy between the amounts in figures and amounts in words. Once a correction is done a bidder whose bid has been corrected should be notified and such a bidder is required to accept or reject the correction made.

From the record of Appeal the Respondent conducted the correction of errors as per the above mentioned provisions as it related to summation. M/s Pipes Industries Company Ltd was notified about the correction made and accepted it.

Given the position that the Appellant conceded that it could not be established that the Appellant's disqualification was justified, the Appeals



Authority hereby accepts the Appellant's prayer that the Appeal be dismissed as its claim in that regard cannot be substantiated.

Therefore, the Appeals Authority hereby dismiss the Appeal and each party is ordered to bear its own costs.

Order accordingly.

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 Appellant and the Respondent this 31st day of October 2019.



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HON. JUSTICE (rtd) SAUDA MJASIRI
CHAIRPERSON

MEMBERS:

1. ENG. STEPHEN MAKIGO.....

2. DR. LEONADA MWAGIKE.....