

**IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY**

APPEAL NO. 6 OF 2020-21

BETWEEN

M/S CREDITINFO TANZANIA LIMITED..... APPELLANT

AND

TPB BANK PLC RESPONDENT

DECISION

CORAM

- | | |
|-------------------------------------|-----------------|
| 1. Hon. Justice (rtd) Souda Mjasiri | - Chairperson |
| 2. Adv. Rosan Mbwambo | - Member |
| 3. Ms. Ndeonika Mwaikambo | - Member |
| 4. Ms. Florida Mapunda | - Ag. Secretary |

SECRETARIAT

- | | |
|------------------------|------------------------|
| 1. Ms. Agnes Sayi | - Senior Legal Officer |
| 2. Ms. Violet Limilabo | - Legal Officer |

FOR THE APPELLANT

- | | |
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| 1. Mr. Tonny Missokia | - Assistant Country Manager,
Creditinfo (T) Ltd |
| 2. Mr. Walter Robogo | - Compliance Officer, Creditinfo
(T) Ltd |



FOR THE RESPONDENT

1. Ms. Paulina Kunjumu - Legal Counsel
2. Mr. Erick Zakayo - Head of Procurement
3. Mr. Lawson Kawamala - Senior Manager - Procurement

The Appeal was lodged by **M/S CREDITINFO TANZANIA LIMITED** (hereinafter referred to as "**the Appellant**") against the **TPB BANK PLC** (hereinafter referred to as "**the Respondent**").

The Appeal is in respect of Tender No. PA/092/2020/TPB/NC/39 for Credit Reference Bureau Services (hereinafter referred to as "**the Tender**").

According to the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**") the background of this Appeal may be summarized as follows: -

On 3rd July 2020 the Respondent through Tanzania National e-Procurement System (TANePS) invited two tenderers, the Appellant inclusive, to submit quotations for the Tender. The Tender was conducted as per the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 446 of 2013 and GN. No. 333 of 2016 (hereinafter referred to as "**the Regulations**").

The deadline for submission of quotations was set for 16th July 2020 at 14.00 hours. The tenders were publicly opened through TANePS at 14.59.04 hours. According to the online tender opening record only one



tenderer M/s Dun & Bradstreet Credit Bureau Tanzania Limited responded to the invitation. The Appellant claimed to have failed to submit its tender due to TANEPS malfunction issues.

On 16th June 2020 at 12.49 PM and 2.04 PM respectively the Appellant wrote emails to the Respondent indicating that it failed to submit/upload its tender in the TANEPS as the system was not working. The Respondent did not respond to the Appellant's emails.

The Appellant through a letter dated 20th July 2020 applied for administrative review to the Respondent. On 5th August 2020 the Respondent issued a decision which dismissed the Appellant's application for administrative review. Aggrieved further, on 11th August 2020, the Appellant lodged this Appeal.

SUBMISSIONS BY THE APPELLANT

The grounds of Appeal as stated in the Appellant's Statement of Appeal as well as oral submissions during the hearing are summarized as follows: -

1. That, the Appellant at the time of submitting its tender informed the Respondent and the Public Procurement Regulatory Authority (PPRA) that the online portal was not working. The Appellant indicated that, it had used several means like changing internet sources and made several calls to the Respondent and PPRA trying to access TANEPS system, but all efforts ended up in vain. The Appellant added that, since it failed to submit its quotation due to system malfunction and the Respondent being duly notified, it expected that once the

TANePS resumed working it would be notified so that it could proceed with the process of submitting its quotation. To the contrary, the Respondent did not notify the Appellant when the TANePS was functioning.

2. That, as per the decision issued with respect to the Appellant's application for administrative review, the Respondent admitted that it accepted quotations after the deadline for submission. The Appellant failed to comprehend the Respondent's conduct in accepting quotations from other tenderers after the deadline for submission. The Appellant was not accorded an opportunity to submit its quotation. In that regard the Respondent did not act in good faith.
3. Finally, the Appellant prayed for the following orders: -
 - i. The Respondent to extend time to allow the Appellant to submit its Bid and further avoid being penalized for faults beyond its control;
 - ii. Alternatively cancel the current Tender and re-advertise it; and
 - iii. Any other legal relief that the Appeals Authority may deem fit and just.

REPLY BY THE RESPONDENT

The Respondent's reply to the Appellant's grounds of Appeal as well as oral submissions during the hearing are summarized as follows: -

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1. That, TANEPS is not owned or managed by the Respondent, but it is a public tendering portal owned by PPRA. The Respondent had no administration right to troubleshoot the system. It added that, the system was working and it managed to open tenders promptly after the deadline for submission.

The Respondent added that, it is among the users of the System in the category of Procuring Entity (PE), whereas the Appellant is in the category of Supplier. Therefore, it has no technical capacity to resolve the system malfunction issues.

2. That, there was no bid that was accepted or submitted after the deadline. The only bid received was submitted on 15th July 2020 prior to the deadline for submission of tenders which was on 16th July 2020. The Respondent expounded that TANEPS is an electronic system which automatically locks itself after the deadline for submission, therefore, there was no room for manual intervention.

The Respondent submitted further that, there was an error on its decision dated 5th August 2020 on the Appellant's application for administrative review which indicated that other bids were received after the deadline for submission. There was no bid that was received after the deadline for submission. The only bid received for this Tender was submitted a day before the deadline for submission of quotations.

The Respondent added that it is not obliged to inform any bidder of the stability or usability of the TANEPS. This function is vested

in PPRA. Therefore, all correspondences with regard to the system failure ought to have been addressed to PPRA and not to the Respondent.

Furthermore, the Respondent did not receive any information from PPRA with regard to the system malfunctioning at the time of submission of quotations. Thus, it could not have acted on the emails submitted by the Appellant out of the normal required channel (TANePS) and beyond the allocated time for accepting tender clarification.

The Respondent requests the Appeals Authority to seek guidance from PPRA as to whether there was a system malfunctioning on the deadline for submission of quotations as the latter owns the system and have the technical capacity with regard to TANePS issues.

3. Finally, in relation to the reliefs sought by the Appellant, the Respondent stated as follows; -

- i. That, the tenderers were given ample time of fourteen (14) days to submit their quotations, hence none of the bidders was penalized by the Respondent in anyway;
- ii. That, extension of time was not done because there were procedures which needed to be complied with before extension is issued. Thus, two hours time was not sufficient; and
- iii. That, among the reasons for cancellation of tender in the early stage is due to change of specifications/terms of reference,

lack of competition or budget constraint which was not the case to this tender. The Respondent did not opt to cancel the tender at that stage because one of the bidders failed to submit its bid on time. Cancelling the tender would imply that the Respondent intends to favor the bidder who failed to submit its quotation on time, hence breaching the principles of the Act which is fairness.

ANALYSIS BY THE APPEALS AUTHORITY

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

- 1. Whether the Appellant's failure to submit its tender on time in the TANEPS is justified; and**
- 2. What reliefs, if any, are the parties entitled to.**

The Appeals Authority proceeded to resolve the above mentioned issues as follows: -

- 1. Whether the Appellant's failure to submit its tender on time in the TANEPS is justified.**

In resolving this issue, the Appeals Authority revisited the documents submitted before it and observed that, the Respondent invited two tenderers, including the Appellant to submit quotations for this Tender. The deadline for submission was set for 16th July 2020 at 14.00 hours. The tenders were publicly opened through TANEPS at 14.59.04 hours. The tender opening records indicate that only one tenderer responded to the invitation.

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The Appellant claimed to have failed to submit its quotation due to TANEPS malfunction issues despite various efforts made to ensure that it managed to submit its quotation within time. On the side of the Respondent it was argued that on the deadline for submission of tenders TANEPS was working as quotations were opened through the same system. Furthermore, since the Respondent is not the owner of the system it has no administration right to troubleshoot the system. TANEPS is owned by PPRA.

In order to substantiate the validity of parties' arguments, the Appeals Authority inquired from PPRA about the TANEPS status on 16th July 2020 on or before 14.00 hours. In response thereof, PPRA indicated that it cannot conclude with certainty that there was no failure of the TANEPS system on the date/time specified. According to PPRA there were interactions of various users within TANEPS. PPRA clarified further that, failure to access TANEPS can also be determined by other factors, including quality of internet service used by bidders, status of computer environment used to interact with TANEPS, as well as IT skills or knowledge of the user.

In view of the explanations from PPRA hereinabove, it is difficult for the Appeals Authority to conclude with certainty that there was no TANEPS failure on the said date and time. According to the Respondent's statement of reply and its decision on the Appellant's application for administrative review, it was not indicated with certainty if the system was working on that particular date and time. Therefore, in view of this state of uncertainty from both ends, the Appeals Authority is compelled



to resolve this issue in favour of the Appellant. Therefore, issue number one is concluded in the affirmative.

However, the Appeals Authority revisited the documents submitted and observed that the Tender Board at its meeting held on 26th June, 2020 approved national shopping as a procurement method for this tender. As a result two tenderers were invited namely M/s Dun and Bradstreet Credit Bureau Tanzania Ltd and M/s Creditinfo Tanzania Limited. According to Regulation 164 (1) of the Regulations, a procuring entity is mandatorily required to obtain at least three quotations from qualified suppliers. In the Tender the subject of this Appeal, the Respondent invited only two tenderers. The Appeals Authority finds the Respondent's act in this regard to have contravened the requirement of Regulation 164 (1) of the Regulations which reads: -

*"Quotations shall be obtained **from at least three suppliers** and may include qualified agents of foreign suppliers in Tanzania".*

(Emphasis added)

The Appeals Authority is of the firm view that, the Respondent's act of inviting only two tenderers minimizes effective competition and contravenes the public procurement principles as enshrined under Section 4A of the Act.

What reliefs, if any, are the parties entitled to.

Given the Appeals Authority's findings hereinabove, the Appeal is hereby allowed. Consequently, the Appeals Authority hereby nullifies the whole

tender process and orders the Respondent to re-tender in compliance with the law.

Each party is to bear its own costs.

It is so ordered.

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 parties this 11th day of September 2020.

HON. JUSTICE (RTD) SAUDA MJASIRI


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CHAIRPERSON

MEMBERS:


1. ADV. ROSAN MBWAMBO.....


2. MS. NDEONIKA MWAIKAMBO