

IN THE  
PUBLIC PROCUREMENT APPEALS AUTHORITY  
AT DAR ES SALAAM

APPEAL CASES NO. 01 OF 2017-18

BETWEEN

M/S PUBLIC GENERAL TRADERS.....APPELLANT

AND

KARIAKOO MARKETS CORPORATION.....RESPONDENT

DECISION

CORAM

- |                              |                  |
|------------------------------|------------------|
| 1. Mrs. Rosemary A. Lulabuka | -Ag. Chairperson |
| 2. Eng. Francis T. Marmo     | -Member          |
| 3. Mr. Luis P. Accaro        | -Member          |
| 4. Mr. Ole-Mbille Kissioki   | -Secretary       |

SECRETARIAT

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

FOR THE APPELLANT

- |                           |                               |
|---------------------------|-------------------------------|
| 1. Mr. Godwin Musa        | - Advocate- Musa & Associates |
| 2. Mr. Omary Alli Singano | - Managing Director           |
| 3. Mr. Adam S. Alli       | - Manager                     |

## FOR THE RESPONDENT

1. Mr. Marco M. Mganga - Head, Procurement Management Unit.
2. Mr. Flavian Mlelwa - Ag. Maintenance Supervisor
3. Mr. Denis I. Mfuluki - Plumber Technician- I
4. Mr. Njakila Oresto - Advocate
5. Mr. Henry Rwejuna - Planning Officer

This Decision was scheduled for delivery this 3<sup>rd</sup> day of August 2017, and we proceed to do so.

The Appeal at hand was lodged by M/s Public General Traders Company Ltd (hereinafter referred to as "the Appellant") against the Kariakoo Markets Corporation (hereinafter referred to as "the Respondent").

The Appeal is in respect of Tender No. PA/109/KMC/2017/2018/NC/23 for Revenue Collection of Motor Vehicles Parking at Kariakoo Markets (hereinafter referred to as "the Tender").

According to the oral submission by the parties during the hearing and documents submitted 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 through the Mwananchi and Raia Mwema Newspapers dated 3<sup>rd</sup> May 2017 invited various tenderers to participate in the Tender. The Tender was to be conducted using the National Competitive Tendering

(NCB) procedures specified in the Public Procurement Regulations of 2013, (hereinafter referred to as GN. No. 446 of 2013).

The deadline for the submission of the Tenders was set for 23<sup>rd</sup> May 2017, whereby the read out prices for the bids during the tender opening ceremony were as follows;

1. M/s Imaleseko Investment Co. TZS. 17,000,000/- VAT Inclusive  
and
2. M/s Public General Traders Co. Ltd. TZS. 15,600,000/-

The Tenders were then subjected to evaluation which was conducted into two main stages, namely; preliminary evaluation and detailed evaluation stage. Both tenders passed the Preliminary evaluation and qualified for the detailed evaluation.

During price comparison stage, the tender by the Appellant was ranked the first. Thus, the Evaluation Committee recommended award of the contract to him at a contract price of TZS. 21,000,000/-; the amount which included VAT, the 20% service charges and administrative costs.

The Evaluation Report was submitted to the Head of Procurement Management Unit (HPMU), who after reviewing it, disagreed with recommendation of the Evaluation Committee. The Secretary observed that M/s Imaleseko Investment Co. ought to have been awarded the tender since his quoted price of TZS. 17,000,000/- was higher than the Appellant's, who quoted TZS. 15,600,000/- He therefore returned the Report for re-evaluation.

The Evaluation Committee re-evaluated the tenders as ordered and on 7<sup>th</sup> June 2017, re-submitted the report to the Secretary to the Tender Board in which it re-iterated its position to award the Tender to the Appellant. Basis of recommendation of award of Tender were as follows:

- The Appellant's quoted price as per his Price Activity Schedule was TZS. 21,000,000/- The read out price of TZS. 15,600,000/- was derived after he deducted, the 20% service charges and administrative costs from revenue of TZS. 21,000,000/-.
- That, M/s Imaleseko Investment Company's Bid Price of TZS. 17,000,000/- VAT inclusive was silent on service charges and administrative costs.

The HPMU being dissatisfied further by the recommendations of Re-evaluation Report, on 9<sup>th</sup> June 2017, forwarded the matter to the Tender Board for deliberation, in which he expressed his dissenting opinion regarding the award proposed by the Evaluation Committee.

The Tender Board at its meeting held on 9<sup>th</sup> June, 2017, deliberated the recommendations from the HPMU and approved the award of the contract to M/s Imalaseko Investment Co. at a contract price of TZS. 17,000,000/-.

The Respondent vide his letter dated 14<sup>th</sup> June 2017, informed the Appellant that his tender was unsuccessful.

Aggrieved by the Notice, on 21<sup>st</sup> June 2017, the Appellant requested for administrative review to the Respondent's Accounting Officer challenging

the award of the contract preferred to the proposed bidder since his price was lower than the Appellant.

On 22<sup>nd</sup> June 2017, the Respondent delivered his decision in which he dismissed the complaint. Dissatisfied, on 3<sup>rd</sup> July, 2017, the Appellant lodged this Appeal.

#### SUBMISSIONS BY THE APPELLANT

The Appellant's grounds of Appeal can be summarized as follows;

- i. That, it is not correct that their tender price was TZS. 15,600,000/- as alleged by the Respondent. Rather, their price was TZS. 21,000,000/- per month as indicated in his Price Schedule. The amount of TZS. 15,600,000/- stated in the Bid Form was the total payments to be remitted to the Respondent after deduction of 20% service charges and administrative costs.
- ii. That, TZS. 17,000,000/- quoted by the proposed successful tenderer did not indicate description of 20% service charges and administrative costs which is to be deducted by him.
- iii. That the proposed successful tenderer did not comply with some of the requirements of the Tender Document like detailing the Price Activity Schedule.

Finally the Appellant prayed that, the Appeal be upheld and the Respondent be ordered to award the contract to them since they were the highest tenderer.

## REPLIES BY THE RESPONDENT

The Respondent reply to the grounds of Appeal was that he had complied with procurement procedures as provided in the Public Procurement Act of 2011 as amended (hereinafter referred to as "the Act").

## ANALYSIS BY THE APPEALS AUTHORITY

Having heard the parties, the Appeals Authority is of the view that, the Appeal has two main issues calling for determination; and these are:-

- i. Whether the award of the tender to the proposed successful tenderer is justified; and
- ii. What reliefs, if any, are the parties entitled to.

Having framed the issues in dispute as above, the Appeals Authority proceeded to determine them as follows.

### 1.0 Whether the award of the tender to the proposed successful tenderer is justified

In resolving this issue the Appeals Authority revisited the Tender Document submitted to the Appeals Authority and observed that, Clauses 11.1 (d) and 14.1 of the Instruction To Bidder(ITB) read together with Clause 19 of the Bid Data Sheet (BDS) guides on how contract price should be quoted. For purposes of clarity the said provisions are reproduced hereunder;

“ITB 11.1 The tender Prepared by the Tenderer shall constitute the following components:

(d)Priced Activity Schedule

(e) N/A”

“ITB 14 The Contract shall be for the Services(s), as described in sub Clause 1.1, based on the price Activity Schedule submitted by the Bidder.” (Emphasis added)

“BDS 19 For inputs to the services which the Bidder expects to provide with (sic) Tanzania, price shall be quoted Tshs. Price to receive 20% actual price.”

The above quoted provisions clearly require tenderers to quote separately in the Price Activity Schedule their administrative costs and 20% service charges payable to them. The Members of the Appeal Authority asked the Respondent to explain if the proposed successful tenderer complied with tender requirement. In reply thereof, the Respondent insisted that the proposed successful tenderer complied with tender requirements. The Appeals Authority reviewed the Bid submitted by the proposed successful bidder and observed that he quoted to submit TZS 17,000,000/- per month VAT inclusive. The Price Activity Schedule attached to his bid did not contain breakdown of the administrative costs and services charges on how the same would be deducted from the original read out price. The Price Activity Schedule contained only the number of revenue collectors. Having been shown this glaring anomaly contained in the bid of the proposed successful bidder, the Respondent conceded that the proposed successful

tenderer did not comply with the Tender requirements and thus they were not eligible for the award of the Tender. Thus, from the Respondent's concession, the Appeals Authority is of the settled view that the tender by the proposed successful tenderer did not comply with the Tender Document.

From the documents submitted, it has been observed that the evaluators recommended the award of the contract to the Appellant, as from his bid, he offered to submit the highest price. Having reviewed the bids by the tenderers, the Appeals Authority concurs with the findings by the Evaluation Committee. The Appeals Authority finds the evaluation process to have been conducted pursuant to Section 72(1) of the Act and Regulation 203 of GN. No. 446 of 2013. The Appeals Authority commends the good work done by the Evaluation Committee and their award recommendation. However, the Appeals Authority observed that the total amount of TZS. 15,600,000/- to be remitted to the Respondent was wrongly calculated as the amount of TZS. 4,200,000/- payable to the tenderer was a 20% of the total collection instead of being the actual collected amount which ought to be after deduction from the costs of the inputs of services as per the Tender Document.

The Appeals Authority further observed that, the HPMU misled the Tender Board in this tender by his dissenting opinion that the Tender be awarded to the proposed successful tenderer who had quoted the highest amount without providing the breakdown of the quoted price as per the provisions stated above.



The Appeals Authority concludes the first issue as conceded by the Respondent that, the award of the Tender to the proposed successful tenderer is not justified.

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


The Appeals Authority took cognizance of its findings in the first issue that the proposed award of the Tender to the proposed successful tenderer is not justified, nullifies the award made to M/s Imalaseko Investment Co. and orders the Respondent to award the Tender to the Appellant M/s Public General Traders Co. Ltd. at the corrected amount of TZS. 15,840,000.00 per month.

It is so ordered. Each party to bear own costs.

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 3<sup>rd</sup> August 2017.

  
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MRS. ROSEMARY A. LULABUKA  
Ag. CHAIRPERSON

MEMBERS:

- 1. ENG. FRANCIS T. MARMO.....
- 2. MR. LUIS P. ACCARO .....