

IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY
AT DAR ES SALAAM

APPEAL CASE No. 1 OF 2018-19

BETWEEN

M/S MARCÉ FIRE FIGHTING TECHNOLOGY APPELLANT

AND

TANZANIA AIRPORTS AUTHORITY RESPONDENT

DECISION

CORAM

- | | |
|--------------------------|-------------------|
| 1. Ms. Monica P. Otaru | - Ag. Chairperson |
| 2. Eng. Francis T. Marmo | - Member |
| 3. Mr. Louis P. Accaro | - Member |
| 4. Ms. Florida Mapunda | - Ag. Secretary |

SECRETARIAT

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

FOR THE APPELLANT

- | | |
|-------------------------------|---------------------|
| 1. Mr. Jan Petrus Steyn | - Managing Director |
| 2. Mr. Tim Kalinjuna | - Sales Executive |
| 3. Mr. Stephen Ally Mwalabolu | - Legal Officer |

FOR THE RESPONDENT

- | | |
|--------------------------|------------------------|
| 1. Mr. Benedicto Mahela | - Consultant |
| 2. Mr. Charles G. Mnyeti | - Ag. HPMU |
| 3. Ms. Janeth Mwaimu | - Senior Legal Officer |
| 4. Mr. Moses Haule | - ASF |

This Appeal was lodged by M/S Marcé Fire Fighting Technology (hereinafter referred to as "the Appellant") against Tanzania Airports Authority (hereinafter referred to as "the Respondent") in respect to Tender No. AE-027/2017-2018/GQ/G/03 for Supply of Airport Crash/ Rescue Fire Tender for Regional Airports, Lots 1 & 2 (hereinafter referred to as "the Tender"). The Tender was conducted using International Competitive Bidding method specified in the Public Procurement Regulations, Government Notice No. 446 of 2013, as amended (hereinafter referred to as "the Regulations").

After going through the records of proceedings 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 Daily News and Guardian newspapers dated 31st October, 2017, invited tenderers to participate in the Tender. The deadline for submission was initially set for 15th December 2017, but was later on extended to 29th December 2017, whereby nine firms submitted their tenders for both lots.

Tenders were subjected to evaluation which was conducted in four stages, namely; preliminary, technical, detailed and post-qualification. At the preliminary evaluation stage, one tender was found to be non responsive to the requirements of the Tender Document, thus it was disqualified. The remaining eight tenders were subjected to technical evaluation for both Lots. The Appellant was found to be non responsive to both Lots. Four other tenders for Lot 1 and three for Lot 2 were also disqualified. The remaining tenders were subjected to detailed evaluation whereby tenders were checked for arithmetic correction and ranking, thereafter the lowest tenders were subjected to post qualification. After completion of the evaluation process the Evaluation Committee recommended award of the Tender to M/s Thenex GmbH, of Germany for Lot 1 and M/s Johs. Gram-Hanssen A/s, of Denmark for Lot 2. On 31st May 2018, the Tender Board

meeting approved the award as recommended by the Evaluation Committee.

On 12th June 2018, the Respondent issued Notice of Intention to Award the Tender which informed the Appellant that their tenders were disqualified for failure to comply with technical requirements.

Dissatisfied, on 15th June 2018, the Appellant applied for administrative review to the Respondent's Accounting Officer. On 19th June 2018, the Respondent suspended the procurement process pending determination of the complaints raised. On 25th June 2018, the Respondent issued the decision by upholding some of the complaints and dismissing four complaints which included quoting 116° instead of 30°-28° for minimum inter axle clearance, 3.8m instead of 3.14m for overall height, 6v instead of 8v for the number of cylinders, and Monitor discharge of 6000L/min instead of 4500L/min within 75m for monitor system.

Dissatisfied further, on 2nd July 2018, the Appellant filed this Appeal.

SUBMISSIONS BY THE APPELLANT

The Appellant disputed reasons given for their disqualification and argued as summarized hereunder:-

1. Quoting 116° minimum inter axle clearance instead of 28° to 30°

On this ground the Appellant submitted that, as per International Standard for Automotive Engineering, there are two inter axle clearance angles, that is; an included angle (Ramp Angle) and excluded angle (Ramp break over Angle). The Tender Document provided for break over ramp angle at 30°-28° while the Appellant offered to submit the vehicle measured at ramp angle of 116° and insisted that the difference is based on the angle measured. As per specification by the Appellant of 116° the break over ramp angle is 32 degrees which exceeds 28°- 30° degrees specified by the Respondent. The Appellant submitted that since they had offered the best

technical specifications in the market, they were wrongly disqualified on this ground.

2. Quoting Overall Height of 3.8m instead of 3.14m

Regarding this point the Appellant argued that, it is true that they quoted overall height of 3.8m instead of 3.14m, however, according to international standards, the acceptable height ranges between 3.5m-4m. Thus quoting 3.8m was still within the range.

The Appellant further argued that it was illogical for Lot 1, 6x6 vehicles, to be of a height of 3.14m while the smaller vehicles of 4x4 for Lot 2 to be 3.6m. According to the Appellant, they conducted a survey and came to a conclusion that, the available 6x6 models on the market include Iveco, Mercedes Benz, MAN, Scania and Volvo were of height above 3.14m thus, they quoted a vehicle of 3.8m height. As the Respondent provided only minimum specifications, the fact that the quoted height superseded the Respondent's minimum specifications, could not have led to disqualification as their tender complied with the requirements of the Tender Document.

3. Submitting Monitor System of 6000L/min instead of 4500L/min

The Appellant argued that, in order to comply with a requirement of discharge water foam solution within 75 meters there was a need of a more powerful pump than 4500L/min. Thus the offered 6000L/min is effective in extinguishing the fire quicker and from a further distance than from a 4500L/min vehicle. They contended that disqualifying them on this ground was not proper since the offered fire pump superseded the minimum specifications provided for in the Tender Document.

4. Engine capacity of 6V instead of 8V

On this ground the Appellant argued that, they sought for clarification from the Respondent about the capacity of the required engine. The Respondent replied that for 4x4 vehicles it should not exceed 300hp and for 6x6 vehicles should not exceed 420hp without mentioning anything about the

cylinders, as such, the Appellant offered to supply vehicles of 6x6 with 420hp and 4x4 vehicles with 326hp. The Appellant further argued that, the offered vehicles and their horse power capacity was within the range specified by the Respondent. Consequently, the Appellant argued that they complied with this requirement; hence their disqualification on this ground is also not justified.

Finally the Appellant prayed for the following orders:-

- i. The decision of the Respondent be revised; and
- ii. The Appellant be awarded the Tender.

REPLY BY THE RESPONDENT

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

That, the Appellant's tender was disqualified for failure to comply with the Technical Specifications. They insisted that, the Appellant ought to have complied with Technical Specifications pursuant to Clauses 12.3, 12.4 and 29.2 of the Instructions To Bidder (ITB) read together with Clause 30 of the Bid Data Sheet (BDS). They argued further that the Appellant's tender contravened Regulations 203 and 206 of the Regulations, thus, their disqualification was inevitable.

The Respondent admitted that the Tended Document, in the Technical Specifications part VII it has provided for minimum specifications, however they argued that minimum specifications did not allow tenderers to submit specifications beyond those provided in the Tender Document. Therefore, the Appellant ought to have strictly adhered to specifications as per the Tender Document.

Finally, the Respondent prayed for dismissal of the Appeal for lack of merits.

ANALYSIS BY THE APPEALS AUTHORITY

The Appeals Authority having gone through the Tender proceedings including various documents submitted by both parties and oral submissions during the hearing, is in agreement with the parties that the Appeal is centred on two main issues and these are:-

1. Whether the Appellant's disqualification is justified; and
2. What reliefs, if any, are parties entitled to

Having framed the above issues, we proceeded to determine them as follows:

1. Whether the Appellant's disqualification is justified

In resolving this issue the Appeals Authority consulted fire experts and revisited the documents submitted before us and observed, as stated earlier, the Appellant's tender was disqualified at the technical evaluation stage due to failure to comply with some of the technical specifications for both Lots. In order to verify the Appellant's disqualification, we revisited Part VII of the Tender Document which provides for Technical Specifications and the introductory part thereto reads as follows:

1.0 GENERAL

The following are the Minimum Specifications which shall be met by the Airport Rescue and Fire Fighting (ARFF) Vehicles to be supplied to Tanzania Airports Authority. However, due to advancement of Technology, the Vehicles to be supplied are expected to supersede these minimum specifications where applicable" (Emphasis added).

In that view, we deemed it proper to verify the Appellant's disqualification on each criterion based on the above provision as hereinunder:-

- i. Minimum inter axle clearance of 30° to 28°

Item 3.0 of the Technical Requirements required bidders to submit minimum inter axle clearance of 30°–28°. The Appellant offered 116° ramp

angle or 32° break over ramp angle which is slightly higher than the one specified in the Tender Document. The Respondent's expert failed to counter the Appellant's argument and boldly insisted that the Appellant did not comply with the requirement without any technical input to that effect.

As the Respondent allowed the submission of higher specifications, the basis for evaluation cannot be fixed at the minimum specifications. We therefore disagree with the Respondent that the Appellant did not qualify because of submitting more advanced specifications.

ii. Overall Height of 3.14m

Item 3.0 of the Technical Requirements required bidders to supply vehicles with a minimum overall height of 3.14m. The Appellant offered to supply a vehicle with a height of 3.8m arguing that the same met the ICAO standards. We revisited the decision by the Accounting Officer in the administrative review and observed that a reason for disqualification on this ground was because there is no parking space within the Respondent's premises to handle the vehicle.

It is stated nowhere in the Tender Document that the vehicles to be supplied should fit the Respondent's parking spaces, or even providing measurements for their parking spaces. The Respondent was however adamant without citing the Tender Document, but later on admitted that the standard height for the fire station door worldwide is not less than 4.0m. In that regard, we are of the settled mind that the Appellant complied with this criterion, thus their disqualification on this ground is also not justified.

iii. Submitting Monitor System of 6000L/min instead of 4500L/min

Item 11.1.1 of the Technical Specifications for Lot 2 require bidders to quote a monitor system capable of discharging water with foam solution with a capacity of 4500L/min within 75m from the front of vehicles. The Appellant's bid has a monitor system of 6000L/min.

The expert opinion sought reveals that a monitor system of 6000L/min, as submitted by the Appellant is more advantageous to the Procuring Entity since the vehicle is capable of discharging water more forcefully within a minute compared to the Respondent's specifications. In that regard and taking cognizance of the Respondent's own desire to be supplied with superior vehicles due to advancement of technology, the Appellant's disqualification based on this criterion equally fails.

iv. Engine capacity of 6V instead of 8V

Regarding this contention, the Appeals Authority took cognizance of the Respondent's admission during the hearing that, due to the issued clarification, the bidders were at liberty to quote either 6V or 8V provided that for 6V the horse power should be not less than 420 which the Appellant complied with. Therefore, disqualification of the Appellant's bid based on this criterion is also not justified.

From the above analysis, we are of a very strong view that the Respondent misconceived Regulations 203 and 206 of the Regulations which he used to disqualify the Appellant, since his own Tender Document allowed flexibility in specifications.

The Appeals Authority therefore concludes the first issue in the negative, that the Appellant's disqualification is not justified at all.

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

Taking cognizance of the above findings, the Appeals Authority hereby upholds the Appeal and nullifies the proposed award to the successful tenderers.

The Respondent is hereby ordered to reinstate the Appellant in the Tender process and re-evaluate all tenders including the Appellant from the detailed evaluation stage, specifically on price comparison and award the Tender accordingly. Each party bear own costs.

It is so ordered.

This Decision is binding on the Parties 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 20th July 2018.


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Ms. MONICA P. OTARU
Ag. CHAIRPERSON

MEMBERS:

1. **ENG. FRANCIS MARMO** 
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2. **MR. LOUIS ACCARO** 
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