

**IN THE**  
**PUBLIC PROCUREMENT APPEALS AUTHORITY**  
**AT DAR ES SALAAM**  
**APPEAL CASE NO. 02 OF 2019-2020**  
**BETWEEN**  
**M/S INTERFINI CONSULTANTS LIMITED .....APPELLANT**  
**AND**  
**CITY COUNCIL OF DODOMA .....RESPONDENT**

**DECISION**

**CORAM**

- |                                     |   |               |
|-------------------------------------|---|---------------|
| 1. Hon. Justice (rtd) Sauda Mjasiri | - | Chairperson   |
| 2. Mr. Rhoben Nkorj                 | - | Member        |
| 3. Adv. Rosan Mbwambo               | - | Member        |
| 4. Ms. Florida Mapunda              | - | Ag. Secretary |

**SECRETARIAT**

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

**FOR THE APPELLANT**

- |                         |   |                             |
|-------------------------|---|-----------------------------|
| 1. Prof. Peter Mhando   | - | Deputy Managing<br>Director |
| 2. Mr. Herman Malangahe | - | Business Development        |



## FOR THE RESPONDENT

- |                                  |   |                     |
|----------------------------------|---|---------------------|
| 1. Mr. Msekeni Mkufya            | - | Legal Officer       |
| 2. Mr. Ellyhuruma M. Mufuruki    | - | Head of PMU         |
| 3. Mr. Ismail W. Mwanajimba      | - | Procurement Officer |
| 4. Mr. Josephat Nyumayo          | - | Procurement Officer |
| 5. Mr. Alistedence N. Rwakilomba | - | Procurement Officer |
| 6. Eng. Emmanuel Manyanga        | - | Civil Engineer      |

This Appeal was lodged by M/s INTERFINi Consultants Limited (hereinafter referred to as "**the Appellant**") against the City Council of Dodoma (hereinafter referred to as "**the Respondent**").

The Appeal is in respect of Tender No. LGA/020/2018-2019/C/13 for Provision of Consultancy Services for the Establishment of a Special Purpose Vehicle to Supervise Council's Investment Projects (hereinafter referred to as "**the Tender**").

The Tender was conducted through Quality and Cost Based Selection Bidding procedures specified in the Public Procurement Act of 2011, as amended (hereinafter referred to as "**the Act**") read together with the Public Procurement Regulations, Government Notice No. 446 of 2013 and Government Notice 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:-



On 17<sup>th</sup> April 2019, the Respondent issued the Request for Proposal (RFP) inviting six shortlisted firms. The deadline for the submission of the proposals was set for 30<sup>th</sup> April 2019. Three firms including the Appellant submitted their Technical and Financial Proposals.

The Technical Proposals were then opened and subjected to evaluation which was conducted in one stage namely; detailed technical proposal evaluation. Two firms including that of the Appellant were found to be compliant to the RFP after they had scored above the minimum set score of 80%.

On 14<sup>th</sup> May 2019, the Tender Board approved the recommendation of the Evaluation Committee that the two firms be invited for opening of the Financial Proposal. On 15<sup>th</sup> May 2019, the Respondent wrote a letter inviting the two firms to attend the opening of the Financial Proposals which took place on 17<sup>th</sup> May 2019. The Financial Proposals were then checked as to the correctness of the quoted prices. Thereafter, Technical and Financial scores were combined and M/s Engage Consult Company emerged to be the first as it scored the highest mark of 87.13%. It was therefore recommended for the award of the Tender.

The Tender Board meeting held on 3<sup>rd</sup> June 2019 approved the award as recommended by the Evaluation Committee. On the same day, the Respondent issued the Notice of Intention to award the Tender to the Appellant as well as other bidders who participated in the Tender. The Appellant received the said Notice on 20<sup>th</sup> June 2019. The Notice informed bidders that the Respondent intended to

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award the Tender to M/s Engage Consult Company after being ranked the first, with a total score of 87.13%. No reason was availed for the Appellant's disqualification.

Aggrieved, on 21<sup>st</sup> June 2019, the Appellant sought for administrative review to the Respondent's Accounting Officer. On 25<sup>th</sup> June 2019, the Accounting Officer issued its decision by dismissing the Appellant's complaint. Aggrieved further, on 4<sup>th</sup> July 2019 the Appellant lodged this Appeal.

### **SUBMISSIONS BY THE APPELLANT**

The Appellant's grounds of Appeal are summarized as follows:-

1. That, the Respondent's decision on administrative review was based on breach of the Regulations and mistrust, due to errors in the evaluation process. The Appellant submitted that the Technical score of the bidders were not read aloud and recorded during the opening of the Financial Proposals contrary to Clause 37.3 of the RFP. Thus, it failed to know the Technical scores of the competing bidder. The Respondent also failed to avail the minutes of the opening of the financial scores to the Appellant.
2. That, according to Clause 38.3 of the RFP, the lowest evaluated financial proposal is to be given a financial score of 100 points before combination of the scores. The Respondent did not adhere to this requirement during evaluation process. It wonders as to what was the basis of the Respondent's evaluation if the technical



scores were not read out. The Respondent's act not only contravened the law but also negatively impacted its bid.

3. That, the scores of 97.67% of the proposed bidder is wonderful, given the nature of the assignment. The Appellant believes that efforts were made by the Respondent to fudge the scores of the competitors during the evaluation of the Technical scores. It stated that statistically it is not possible for a firm to score 97.67%. The gap of scores cannot be explained unless there was fraud.
4. That, there is deliberate misrepresentation through miscalculation of the figures in the bidders' proposals. The Respondent's letter states clearly that VAT was not included in their RFPs. After VAT calculation TZS. 10,260,000 was added to the Appellant and TZS. 18,090,000/- for the proposed successful bidder. This is not correct. According to Tanzania Revenue Authority (TRA), VAT is chargeable on the taxable supplies of goods and services. If one reviews the figures by the bidders, VAT rates are not 18% as stipulated. Instead, the VAT charged is 15.6% for the Appellant and 12% for the proposed bidder. This means that the VAT charges for the Appellant was higher than the charges for the proposed successful Tenderer. There was a deliberate move by the Respondent to disqualify its bid.
5. That, the Respondent did not communicate in time the Notice of Intention to award the Tender it had written on 3<sup>rd</sup> June 2019 to



the Appellant. The Notice reached the Appellant on 20<sup>th</sup> June 2019. That is seventeen days after the Appellant had inquired about the Tender outcome to the Respondent. This is an indication of the Respondent's ill motive over it. The Appellant became aware of the award after the Tender had been awarded to the proposed bidder.

6. The letter from the Respondent dated 25<sup>th</sup> June 2019 which was addressed to the Appellant was misleading since it was asserted that it had communicated the Technical scores to the Appellant while it was not the case. The Respondent neither communicated nor read out the scores during the opening of the Financial Proposals. It acted contrary to the spirit of the procurement law.

Finally, the Appellant prayed for the following orders:-

- i. An independent review of the entire evaluation process. That is Technical and Financial proposals by procurement professionals at the PPRA or as provided under the Regulations.
- ii. Award of the Tender to the rightful bidder.
- iii. Reprimand the Respondent and institute legal measures upon those who did not comply with the law.

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## REPLY BY THE RESPONDENT

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

1. That, the Tender process complied with the requirements of the law and that the whole process was conducted with a high degree of integrity and trust. The assertions by the Appellant are not true as the truth can be seen and read from the supporting documents.
2. That, the invitation letters for opening of the Financial Proposals contained Technical scores of each invited bidder. The scores for Technical Proposal of each bidder were also read out during the opening of the Financial Proposals. The Appellant was represented by one Yohana Arsen Rutaba. The Appellant's claims are mere speculations based on hearsay which is not admissible. The person who represented the Appellant at the Financial opening is not before the Appeals Authority to confirm what happened on that day.
3. That, the Notice of Intention to award the Tender was sent to the Appellant by post using the address provided in its proposal. The Respondent could not send it via e-mail due to technical problems at its office at that particular time.

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

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## **ANALYSIS BY THE APPEALS AUTHORITY**

The Appeals Authority having gone through the Appeal record, tender proceedings including various documents and oral submissions by the parties, is of the view that the Appeal is centred on two main issues which were agreed upon by the parties and approved by the Appeals Authority. These are:-

- 1. Whether disqualification of the Appellant's tender was justified; and**
- 2. What reliefs, if any, are the parties entitled to**

Having identified the issues in dispute, the Appeals Authority proceeded to resolve them as hereunder:-

In relation to issue Number One that is, *whether disqualification of the appellant's tender was justified* the Appeals Authority revisited Clause 37.3 of the Information To Consultants (ITC) read together with Regulation 302 (2) of the Regulations and observed that, it is a mandatory requirement that before the opening of the Financial Proposal, the results of the Technical evaluation must be read out to the parties present.

To substantiate if the above requirement had been complied with by the Respondent, the Appeals Authority revisited the records of Appeal and observed that, the Minutes of the Financial Opening dated 17<sup>th</sup> May 2019, clearly indicated that the Technical scores of the Appellant and M/s Engage Consult Company Ltd the proposed bidder were read out. The Appellant scored 80.33% and the proposed bidder 97.67%. The Appeals Authority observed further that the Appellant was





represented by one Yohana Arsen Rutaba who also signed the record of the bid opening.

From the above facts, the Appeals Authority is of the firm view that, Technical scores of both invited firms were read out as reflected from the Minutes of Financial opening. The Appellant never requested the Minutes of the said meeting.

The Appeals Authority is of the view that the Appellant was duly represented during the opening of the Financial Proposals. Therefore, if there was any anomaly in relation to the opening procedures, the same could have been raised in view of sections 95(1) and 96(4) of the Act which allow a dissatisfied bidder to lodge a complaint within seven working days of becoming aware of the circumstances giving rise to the complaint. For purpose of clarity Sections 95 and 96(4) are reproduced hereinunder:-

*Sec. 95(1) " Any tenderer who claims to have suffered or that may suffer any loss or injury as a result of a breach of duty imposed on a procuring entity by this Act may seek a review in accordance with Sections 96 and 97".*

*96(4) "The Accounting Officer shall not entertain a **complaint or dispute unless it is submitted within seven working days from the date the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute** or when that tenderer should have become aware of those circumstances, whichever is earlier."*

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The Appeals Authority observed from the Statement of Appeal that the Appellant's main contention centered on the reading out of the Technical scores during the opening of the Financial Proposals. The Appeals Authority is of the view that if the Appellant was dissatisfied with how the opening process of the Financial Proposals was conducted, that is failure to read out the Technical scores, it ought to have challenged the said anomaly by lodging a formal complaint to the Respondent within seven working days from the date of opening of the Financial Proposals.

It is undisputed that the Financial Proposals were opened on 17<sup>th</sup> May 2019. Counting from that particular date, the seven working days within which the Appellant ought to have lodged its complaint expired on 28<sup>th</sup> May 2019. The Appellant lodged its complaint on 21<sup>st</sup> June 2019 after receipt of the Notice of Intention to award. From the sequence of events it is crystal clear that the complaint relating to the reading out of the Technical scores has not been raised within the prescribed time.

With regard to the Appellant's contention that the Respondent had not adhered to Clauses 38.3 and 40.1 of the RFP in conducting the evaluation, the Appeals Authority revisited the said clauses and observed that the same provide a formula to be used in calculating the Financial Proposals as well as the combined evaluation. Furthermore, the Appeals Authority revisited the Evaluation Report and observed that, the Respondent had used the formula provided in the RFP in calculating the Financial Proposals of both bidders including combination of the two proposals. The combined proposals

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scores indicate clearly that the proposed bidder had the highest score of 87.13% followed by the Appellant with a score of 84.26%.

Given the circumstances, the Appeals Authority is of the settled view that the Respondent complied with the requirements of the RFP and Regulation 304(1),(2),(3),(4) and (5) of the Regulations in calculating the Financial Proposal and combined proposals (Technical and Financial) of the two firms. The said Regulation is reproduced hereunder:-

*Reg. 304(1) "The proposal with the lowest cost shall be given a financial score of one hundred and other proposals given financial scores that are inversely proportional to their prices and in the alternative a directly proportional or other methodology may be used in allocating the marks for the cost.*

*(2) Subject to sub regulation (1) the methodology to be used shall be described in the request for proposals.*

*(3) The total score shall be obtained by weighting the quality and cost scores and adding them and the weight for the cost shall be chosen taking into account the complexity of the assignment and the relatively importance of quality.*



*(4) Notwithstanding sub-regulation (2), the weight for cost shall be in the range of ten to twenty points, but in no case shall exceed thirty points out of a total score of one hundred.*

*(5) The proposed weightings for quality and cost shall be specified in the request for proposals and the firm obtaining the highest total score shall be recommended for contract award and for negotiations”.*

We also observed that the Appellant was disqualified for being ranked second for having a lower score in the combined Technical and Financial evaluation. In view of what is provided under Regulation 304 (supra), the Appeals Authority finds that the Appellant's complaint has no basis.

With regard to the Appellant's complaint on the calculation of 18% of the VAT, the Appeals Authority revisited the combined Evaluation Report in respect of the Financial Proposals of both firms and observed that, the Respondent added 18% of the VAT to the remuneration expenses quoted by two firms. The Respondent excluded reimbursable expenses that would have caused double taxation in the total amount quoted by bidders since 18% VAT was already added. The Appeals Authority observed that the Appellant scored a weight of 20 while the proposed bidder scored a weight of 8.99 in the Financial Proposal.

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The Tender was Quality Cost Based Selection, and that the successful bidder is obtained after combining the weight given in the Technical and Financial Proposals. The combined Evaluation Report availed to this Authority indicate that the proposed bidder scored a higher total score of 87.13% while the Appellant scored 84.26%. The Appeals Authority finds that the Respondent complied with Clause 40.1 of the RFP read together with Regulation 302(3) and (5) of the Regulation quoted above.

The Appeals Authority further considered the Appellant's argument that the delay in receiving Notice of Intention created suspicion on the Respondent's part. It is indeed evident from the record that the Appellant received the said Notice late. However the same did not prejudice the Appellant's rights. After receiving the said Notice, the Appellant exhausted the available review mechanisms up to the Appeals Authority's level.

Given the above findings, the Appeals Authority concludes the first issue in the affirmative, that is, the disqualification of the Appellant's tender was justified.

In relation to issue number two (2) on *what reliefs, if any, the parties are entitled to*, the Appeal Authority taking cognizance of the findings on the first issue hereby dismiss the Appeal for lack of merits.

The Respondent may therefore proceed with the Tender process in accordance with the law.

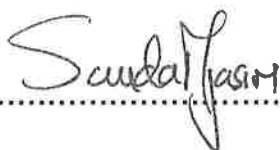
As the Respondent did not press for costs, we make no order as to costs. Order accordingly.

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This Decision is binding on the parties and can be enforced in accordance with Section 97(8) of the Act.

The parties have a right to Judicial Review as per Section 101 of the Act.

This Decision is delivered in the presence of the Appellant and the Respondent this 7<sup>th</sup> day of August 2019.

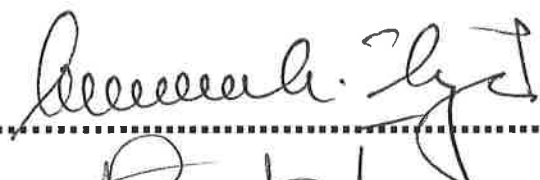


**HON. JUSTICE (RTD) SAUDA MJASIRI**

**CHAIRPERSON**

**MEMBERS:**

**1. MR. RHOBEN NKORI**



**2. ADV. ROSAN MBWAMBO**

