

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 38 OF 2023 - 2024

BETWEEN

M/S VUJE SECURITY SERVICES

COMPANY LTD.....APPELLANT

AND

TANZANIA AIRPORTS AUTHORITY - SONGWE

AIRPORT.....RESPONDENT

DECISION

CORAM

- | | |
|-------------------------------------|---------------|
| 1. Hon. Justice (Rtd) Sauda Mjasiri | - Chairperson |
| 2. Mr. Pius Mponzi | - Member |
| 3. Dr. William Kazungu | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Ms. Florida Mapunda | - Deputy Executive Secretary |
| 2. Ms. Agnes Sayi | - Senior Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPELLANT

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| 1. Mr. Suleiman Kaganda | - Company Secretary |
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FOR THE RESPONDENT

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| 1. Ms. Zilida Mwijarubi | - Legal Officer- Head Office |
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- | | |
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| 2. Mr. Nitunga Gabriel | - Procurement Officer – Head Office |
| 3. Mr. Omary Baruti | - Head of Security – TAA Songwe |
| 4. Mr. Casmir Msole | - Senior Procurement Officer – TAA
Songwe |

This Appeal was lodged by **M/S Vuje Security Services Company Ltd** (hereinafter referred to as "**the Appellant**") against the **Tanzania Airports Authority – Songwe Airport** commonly known by its acronym as "**TAA - SONGWE**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Quotation No. TR228/012/2023/2024/NC/12 for the Provision of Security Services at Songwe, Iringa, Mpanda and Sumbawanga Airports (hereinafter referred to as "**the Tender**").

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

The Tender was conducted through the Restricted National Competitive Tendering Method as specified in 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 as amended (hereinafter referred to as "**the Regulations**").

On 19th February 2024, the Respondent through the National e-Procurement System of Tanzania (NeST) invited eligible tenderers to submit their quotations for the Tender. The deadline for submission of quotations was set on 26th February 2024. By the deadline, six tenderers including the Appellant submitted their quotations.

The received quotations were subjected to evaluation. After completion of the evaluation process, an award was recommended to M/S Nageza Solutions Ltd. The recommended contract price was Tanzania Shillings Three Million Six Hundred Ten Thousand only (TZS 3,610,000.00) per month VAT exclusive as per the following breakdown: -

- i) Sumbawanga Airport – TZS 680,000.00 per month
- ii) Mpanda Airport – TZS 1,190,000.00 per month
- iii) Iringa and Njombe Airports – TZS 1,740,000.00 per month.

The Tender Board approved the award recommendation through a Circular Resolution No. 30/2023/2024 dated 12th March 2024. The Respondent through a letter dated 12th March 2024 communicated the Notice of Intention to award the Tender. The Notice informed the Appellant that the Respondent intended to award the Tender to M/S Nageza Solutions Ltd. Furthermore, the Notice indicated that the Appellant's tender was disqualified for submitting insufficient number of security guards and poor performance in a contract of similar nature at Songwe Airport.

Dissatisfied with the reasons given for its disqualification, the Appellant through a letter dated 12th March 2024 filed an application for administrative review to the Respondent. On 18th March 2024, the Respondent issued its decision which rejected the Appellant's application for administrative review. Being aggrieved by the Respondent's decision, the Appellant filed this Appeal to the Appeals Authority on 27th March 2024.

When the matter was called on for hearing, the following issues were framed, namely: -



1.0 Whether the disqualification of the Appellant's tender was justified; and

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

SUBMISSIONS BY THE APPELLANT

The Appellant's submissions were made by Mr. Suleiman Kaganda, Company Secretary. He commenced his submissions on the first issue by stating that the Appellant was among the tenderers which submitted their quotations for the Tender under Appeal through NeST as was required. On 12th March 2024, the Appellant received the Notice of Intention to award which informed it that the Respondent intended to award the Tender to M/S Nageza Solutions Ltd. The Notice also stated that the Appellant's quotation was unsuccessful for submitting insufficient number of security guards and poor performance in a contract of similar nature at Songwe Airport. Dissatisfied with the reasons for its disqualification, the Appellant filed an application for administrative review to the Respondent and subsequently filed this Appeal.

Mr. Kaganda contended that the Appellant complied with all the requirements of the Tender, thus it should not have been disqualified from the Tender process. He argued that the Quotation Document required tenderers to submit a proof of availability of nineteen (19) security guards. The Appellant complied with such a requirement as it submitted the exact number of security guards.

Regarding the Appellant's poor performance on the previously executed contract with the Respondent, Mr. Kaganda submitted that at the time of execution of the referred contract, the Appellant discharged its duties as



per the terms and conditions of the contract. In addition, the Appellant neither received a warning nor a notice of intention to terminate the contract from the Respondent which would be an indication that the latter was not satisfied with the services rendered. The Appellant also contended to have not received any written complaints from its security guards. Thus, all the letters which have been relied upon by the Respondent and submitted before the Appeals Authority as a proof of the Appellant's poor performance are not authentic and have been forged.

Mr. Kaganda also submitted that in substantiating the Appellant's poor performance the Respondent forced some of the Appellant's security guards to write complaint letters to the Respondent against the Appellant. The letters were backdated, and the security guards were warned not to disclose the said fact. Thus, the Respondent's evidence for the Appellant's poor performance was not genuine.

Mr. Kaganda stated that the Appellant is dissatisfied with the manner the whole Tender process was conducted as it has been marred with corruption and unfair treatment of tenderers. Therefore, the Appellant requests the Appeals Authority in collaboration with the Prevention and Combating of Corruption Bureau (PCCB) to investigate the conduct of some of the Respondent's employees. Additionally, the Appeals Authority and the PCCB should examine the proposed successful tenderer for it lacked the requisite qualifications to be awarded the tender.

Mr. Kaganda concluded his submissions by contending that the Respondent has been deducting the Appellant's monthly payment with no justifiable reasons and without adhering to the terms and conditions of the contract.



The Respondent did these unlawful deductions as the Appellant refused to participate in corrupt practices.

Finally, the Appellant prayed for the following reliefs: -

- i) The Appeals Authority to review the award decision made by the Respondent so as to ascertain if the same was made justly; and
- ii) Award be made to the Appellant.

REPLY BY THE RESPONDENT

The Respondent's submissions were made by Ms. Zilida Mwijarubi, a Legal Officer from the Respondent's Headquarters. She commenced her submissions on the first issue by stating that the Appellant was one of the tenderers which participated in the disputed Tender. After completion of all the internal processes, the Appellant's quotation was found to have insufficient number of security guards and had a poor performance record on the previous contract of similar nature executed at Songwe Airport.

The Legal Officer submitted that the Appellant was fairly disqualified from the Tender process after failing to comply with the requirements of the Tender. The Quotation Document required tenderers to demonstrate the availability of twenty one (21) security guards. To the contrary, the Appellant submitted seventeen (17) names, amongst them two were supervisors. Thus, the actual security guards were only fifteen (15) instead of twenty one (21) as required. Therefore, the Appellant's quotation did not comply with the requirements of the Tender.

Regarding the Appellant's poor performance of the previous contract executed at Songwe Airport, the Legal Officer submitted that it was clear from the available records that the Appellant failed to execute the contract



as per the terms and conditions provided. The Appellant was first informed of its poor performance in a meeting convened by the Respondent on 27th March 2023. At the said meeting, the Appellant was informed about its shortcomings in allocating insufficient number of security guards on duty stations and the delay in effecting payment of salaries to its employees. The Appellant conceded to the noted anomalies and promised to rectify the same. However, the anomalies were not rectified as promised, the Legal Officer contended.

The legal Officer submitted further that the Respondent through a letter dated 6th April 2023 notified the Appellant about the anomaly in allocating insufficient number of security guards on duty stations and as a result its monthly payment was deducted. She stated further that the Respondent received complaint letters from the Appellant's security guards on non-payment of salaries. Following the Appellant's conduct in the execution of the contract, the Respondent notified the Appellant of its intention to terminate the contract through a letter dated 23rd May 2023. The said letter was served to the Appellant physically through a dispatch book. Thus, the Appellant was aware of its poor performance in the execution of the contract at Songwe Airport.

The Legal Officer denied the Appellant's allegation that the security guards were forced to write complaint letters which indicated that the Appellant failed to honour the terms and conditions of the contract. She stated that the complaint letters from security guards were regularly submitted to the Respondent's office following the Appellant's delay to effect payment of salaries. The security guards were seeking the Respondent's intervention



as the employer of the Appellant. Thus, the security guards were not forced to write the letters as contended by the Appellant.

On the reduction of the Appellant's monthly payment, the legal officer stated that the deduction was in accordance with section I, page three (3), item 2(iii) and section III, page seven (7) of contract number AE-027/2022-23/SGW/NC/09 for Provision of Security Services at Songwe and Mbeya Old Airports. The referred clauses clearly state that, "Payments will be effected on monthly basis based on performance and attendance". Thus, following the Appellant's act of allocating insufficient number of security guards on duty stations, the Respondent deducted its monthly payment from February 2023 to January 2024. Therefore, the deductions were justified.

The Legal Officer concluded her submissions by stating that the evaluation process was conducted as per the requirements of the Act and its Regulations.

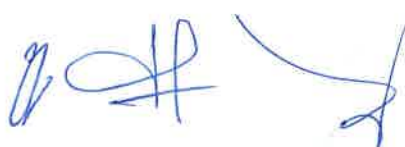
Finally, the Respondent prayed for the following reliefs: -

- i) Appeal be dismissed with costs;
- ii) The Respondent be allowed to proceed with the contract signing in respect of the Tender under Appeal; and
- iii) Any other order as the honourable Appeals Authority may deem fit to grant.

ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the disqualification of the Appellant's tender was justified

In resolving this issue, the Appeals Authority reviewed the record of Appeal. It observed that the Notice of Intention to award indicated that



the Appellant's tender was disqualified for submitting insufficient number of security guards and having poor performance in a contract of a similar nature at Songwe Airport.

In ascertaining the validity of the reasons given for the disqualification of the Appellant, the Appeals Authority reviewed the Quotation Document. It observed that according to the Activity Schedule, the required number of security guards was four (4) for Sumbawanga Airport, seven (7) for Mpanda Airport, ten (10) for Iringa and Njombe Airports. Thus, the total number of the required security guards was twenty one (21) and Tenderers were required to demonstrate the availability of this number.

In order to substantiate if the Appellant complied with the above requirement, the Appeals Authority reviewed the Appellant's quotation on NeST. It observed that the Appellant had only listed fifteen (15) security guards. During the hearing, the Appellant conceded to have submitted a list of fifteen (15) security guards. Therefore, it failed to comply with the requirement of the Tender in this regard.

The Appeals Authority considered the second reason for the disqualification of the Appellant's tender that is, a poor performance record in execution of a contract of similar nature at Songwe Airport. The Appeals Authority reviewed the Quotation Document and observed that Clause 2.2 of the Instruction to Tenderers (ITT) required tenderers to submit a list of three (3) recently performed contracts of a similar nature, value and complexity including the name and addresses of the employers for verification. The Appeals Authority reviewed the record of Appeal and observed that one of the current contracts executed by the Appellant is contract No. AE-



027/2022-23/SGW/NC/09. This contract was entered between the Appellant and the Respondent running from 1st January 2023 to 31st January 2024. The Appellant acknowledged that the referred contract is one of the recently performed contracts, however; it denied the allegations of poor performance. The Appellant contended to have executed successfully the referred contract.

The Appeals Authority reviewed the record of appeal and observed that during the execution of contract No. AE-027/2022-23/SGW/NC/09 the Appellant was found to have some weaknesses. These weaknesses included delay in effecting salary payments to its security guards, allocating insufficient number of security guards on duty stations and failure to give the security guards employment contracts as required by the terms and conditions of the contract.

The record of Appeal indicates that on 27th March 2023, the Appellant attended a meeting convened by the Respondent. The purpose of the meeting was to discuss parties' responsibilities under the contract. Among the items that were discussed included the Appellant's obligations to comply with terms and conditions of the contract. In the said meeting, the Appellant was required to improve its performance in areas relating to allocation of the required number of security guards on duty stations and timely payment of salaries to its security guards. After deliberations, the Appellant committed itself to rectify the observed anomalies.

The record of Appeal indicates further that the Respondent through a letter with reference No. AE-027/2022-23/SGW/NC/01/04 dated 6th April 2023, notified the Appellant of a deduction of TZS 400,020.00 from its monthly

payment. The deduction was due to allocation of insufficient number of security guards on duty stations for the month of February 2023.

The Appeals Authority also observed from the record of Appeal that the Respondent has been receiving letters from the Appellant's security guards claiming delay in payment of their salaries. The letters were dated 19th April 2023 and 20th May 2023 respectively. The security guards were requesting the Respondent as the employer of the Appellant to intervene on the issue of delay of payment of salaries.

After receiving several complaints from the Appellant's security guards and having encountered shortcomings of insufficient number of security guards on duty stations, the Respondent notified the Appellant of its intention to terminate the contract through a letter dated 23rd May 2023. The reasons for termination were failure to effect the timely payment of salaries and allocation of insufficient number of security guards on duty stations contrary to the terms and conditions of the contract. Through the same letter, the Respondent informed the Appellant that its act of allocating insufficient number of security guards on duty stations led to deduction of monthly payment for March and April 2023. Thus, the Appellant was reminded to adhere to the terms and conditions of the contract and failure to do so would result into termination of the contract.

The Appeals Authority noted further from the record of Appeal that the Appellant failed persistently to allocate the required number of security guards at the duty stations. Consequently, the Respondent continuously deducted the Appellant's monthly payments from February 2023 to January 2024.



In view of the various shortcomings pointed out hereinabove which amounted to poor performance by the Appellant, the Appeals Authority is of the settled view that the Appellant's disqualification is justified and is in accordance with Regulation 206(2) of the Regulations which reads as follows: -

"Reg. 206(2) ***where a tender is not responsive to the tender document, it shall be rejected by the procuring entity and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation.***"

(Emphasis added)

The Appeals Authority considered the Appellant's assertion that the documents submitted by the Respondent in support of the proposition that the Appellant had poor performance were not genuine but forged. The Appellant failed to substantiate before the Appeals Authority that these documents were not authentic. In view of this fact, the Appeals Authority rejects the Appellant's contention in this regard.

Given the circumstances, the Appeals Authority concludes the first issue in the affirmative that the Appellant's disqualification is justified.

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

Taking cognizance of the findings hereinabove, the Appeals Authority hereby dismiss the Appeal and allows the Respondent to proceed with the Tender process in accordance with the law. We make no order as to 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 Respondent and in the absence of the Appellant though duly notified this 25th day of April 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI



.....
CHAIRPERSON

MEMBERS: -

1. MR. PIUS MPONZI.....

2. DR. WILLIAM KAZUNGU.....