

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 13 OF 2024 - 2025

BETWEEN

**M/S CHINA JIANGXI INTERNATIONAL ECONOMIC AND
TECHNICAL COOPERATION CO. LTD.....APPELLANT**

AND

MOROGORO MUNICIPAL COUNCIL..... RESPONDENT

RULING

CORAM

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

SECRETARIAT

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

FOR THE APPELLANT

- | | |
|-------------------------|-------------------------------------|
| 1. Mr. Jeremia Mtobesya | - Advocate, Sweet and
Conrad LLP |
| 2. Mr. Sweetbert Nkuba | - Advocate, Sweet and
Conrad LLP |



3. Mr. Prosper Mtui
4. Mr. Peng Chao
5. Mr. Maurus Frank

- Quantity Surveyor
- Country representative
- Business Manager

FOR THE RESPONDENT

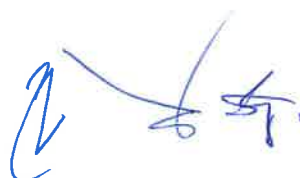
1. Mr. Emmanuel Mkongo
2. Mr. Andreas Whero
3. Mr. Tedrous Michael
4. Mr. Modestus Kasitila

- Municipal Director
- Municipal Legal Officer
- Engineer
- Municipal Procurement Officer

M/S China Jiangxi International Economic and Technical Cooperation Co. Ltd (hereinafter referred to as **"the Appellant"**) has lodged this Appeal against **Morogoro Municipal Council** (hereinafter referred to as **"the Respondent"**). The Appeal is in respect of Tender No. 7916/2023/2024/W/50 for Construction of Kihonda Commuter Bus Stand under TACTIC Project in Morogoro Municipality (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: -

This Tender was conducted through International Competitive Tendering method as specified in the World Bank's "Procurement Regulations for IPF Borrowers" Fourth Edition, November 2020 (hereinafter referred to as **"the World Bank Procurement Regulations"**) and the Public

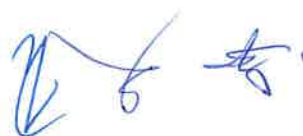


Procurement Act, No.7 of 2011 as amended (hereinafter referred to as **"the Act"**) and the Public Procurement Regulations, GN. No. 446 of 2013 as amended (hereinafter referred to as **"the Regulations"**). The Act was repealed and replaced by Act No. 10 of 2023, effective from 17th June 2024, while the Regulations were repealed and replaced by GN. No. 518 of 2024, effective from 1st July 2024.

On 19th January 2024, the Respondent through National e-Procurement System of Tanzania (NeST) invited eligible tenderers to participate in the Tender. The deadline for submission of tenders was set on 5th March 2024. On the deadline, the Respondent received twelve tenders including that of the Appellant.

The received tenders were opened and subjected to evaluation. After completion of the evaluation process, the evaluation committee recommended award of the Tender to M/S Gopa Contractors Tanzania Ltd. The recommended contract price was Tanzania Shillings Eleven Billion Four Hundred Sixty-Three Million Six Hundred Sixty Two Thousand Two Hundred Fifty One and Seven Cents only (TZS 11,463,662,251.7) VAT Exclusive. The Tender Board approved award of the Tender on 18th April 2024 as was recommended by the Evaluation Committee.

On 25th May 2024, the Respondent issued the Notice of Intention to award the Tender. The Notice stated that the Respondent intended to award the Tender to M/S Gopa Contractors Tanzania Ltd. In addition, the Notice informed the Appellant that its tender was not considered for award as it submitted a line of credit facility from the bank of China Jiangxi branch



which was issued on 25th August 2023. The said date was before the advertisement of the Tender and did not indicate the current limit of credit available to the Appellant.

Dissatisfied with the reason given for its disqualification, on 26th May 2024, the Appellant applied for administrative review to the Respondent. The record of Appeal indicates that after receipt of the Appellant's application for administrative review, the Respondent formed an independent review team to review the application. After completion of the review process, the independent review team recommended the re-evaluation of tenders.

All the received tenders were subjected to re-evaluation. After completion of the re-evaluation process, the Evaluation Committee recommended award of the Tender to M/S China Jiangxi Corporation for International Economic & Technical Corporation. The recommended contract price was Tanzania Shillings Ten Billion Eight Hundred Fifteen Million Two Hundred Eighty Thousand Four Hundred and Three and Nineteen Cents only (TZS 10,815,280,403.20) VAT Exclusive. The Tender Board approved award of the Tender on 19th July 2024 as recommended by the Evaluation Committee.

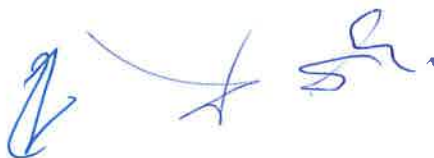
According to the record of Appeal the Respondent through a letter dated 25th September 2024, informed the Appellant that its tender was not considered for award. This was due to the Appellant being disqualified during post qualification process for submitting tender security in the name of M/S China Jiangxi International Economic and Technical Cooperation Co. Ltd instead of M/S China Jiangxi Corporation for International Economic &



Technical Corporation, a company that participated in the Tender. The letter stated further that other documents such as the Power of Attorney, site organization, risk management plan, mobilization schedule, method statement and line of credit were all issued in the name of M/S China Jiangxi International Economic and Technical Cooperation Co. Ltd, a company that did not participate in the Tender. In view of this, the Respondent considered the Appellant's anomalies to have contravened Clauses 19 and 38.2 of the Instructions To Bidders (ITB).

Upon being dissatisfied with the reason given for its disqualification, on 1st October 2024, the Appellant applied for administrative review to the Respondent. As per the record of Appeal, the Respondent did not entertain the Appellant's application for administrative review. Thus, on 17th October 2024, the Appellant filed this Appeal before the Appeals Authority.

The Appellant's Appeal centered on the ground that the Respondent has unfairly disqualified its tender during post-qualification stage due to names discrepancy on the submitted documents for the Tender. The Appellant stated that the initially registered name of its company in China was M/S China Jiangxi Corporation for International Economic and Technical Cooperation. However, having secured a contract in Tanzania, the Appellant obtained a Certificate of Compliance from Business Registration and Licensing Agency (BRELA) on 9th January 2015 under the same name. During its transactions, the Appellant changed its name from the original registered name to M/S China Jiangxi International Economic and Technical



Cooperation Co. Ltd. BRELA being the registrar of companies was notified by the Appellant about the change of name. According to BRELA the changes were accepted and effected from 10th February 2021.

The Appellant elaborated that during its registration in NeST it provided the company's registration number from BRELA, TIN number from Tanzania Revenue Authority (TRA) and registration number from Contractors Registration Board (CRB). NeST picks all the relevant information directly from the issuing authorities whose systems are already linked with it. Tenderers are not allowed to enter any information from the issuing authorities whose systems have been linked directly with it. Thus, among the information which is directly picked by NeST includes the company's registration details. The Appellant entered only account information which was under the new name, and NeST picked the company's registration particulars from BRELA. Currently, NeST recognizes the Appellant by both the old and the new name. However, all the documents which establish the Appellant's eligibility to participate in this Tender were in the new name. Thus, the Respondent before deciding to disqualify the Appellant's tender, it ought to have sought for clarification from it on the authenticity of the names. Hence the Appellant disputes its disqualification from the Tender process.

Upon receipt of this Appeal, the Appeals Authority notified the Respondent about the existence of the Appeal and required it to submit a Statement of Reply. In response to the grounds of Appeal, the Respondent stated that the Appellant's tender was fairly disqualified from the Tender process as



the company which participated in the Tender was M/S China Jiangxi Corporation for International Economic and Technical Cooperation and not M/S China Jiangxi International Economic and Technical Cooperation Co. Ltd. In establishing compliance with the requirements of the Tender, the Appellant submitted the documents which were under the name of M/S China Jiangxi International Economic and Technical Cooperation Co. Ltd, the firm which did not participate in the Tender. Thus, the Respondent found the Appellant's tender to have contravened Clauses 4, 11, 17, 19, 29 and 38.2 of the ITT. The mentioned provisions state clearly that if the tender fails to comply with the requirements provided in the Tender Document the same must be rejected. Thus, Respondent's decision to disqualify the Appellant's tender was justified and in accordance with the law.

When the matter was called on for hearing and at the time of framing up the issues, the Appeals Authority informed the parties that it observed from the record of Appeal that there is a point of law to be determined. This was about the bid validity period of the Tender. In view of this observation, the following issues were framed which covers both the point of law raised *suo motu* by the Appeals Authority and the substantive merits of the Appeal. The issues were as follows: -

- 1.0 Whether there is a valid Tender for determination by the Appeals Authority;**
- 2.0 Whether the disqualification of the Appellant's tender was justified; and**



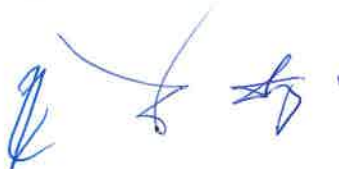
3.0 What reliefs, if any, are the parties entitled to?

Having framed the issues, the Appeals Authority required the parties to address the first issue which relates to the point of law before embarking on the substantive Appeal.

SUBMISSIONS BY THE APPELLANT

The Appellant's submissions were made by Mr. Jeremia Mtobesya, learned counsel. He commenced by stating that Section 71 of the Act requires the tender validity period for the tender to be specified in the Tender Document. He stated that according to Section 71 of the Act, the specified tender validity period must be sufficient to enable the procuring entity to complete and finalize the Tender process including award of the Tender. Mr. Mtobesya submitted that the specified tender validity period for this Tender was 120 days. Counting from 5th March 2024 when the Tender opening took place, the tender validity period was to expire on 3rd July 2024.

Mr. Mtobesya submitted that the Appellant is aware that the law allows the procuring entity to request for extension of the tender validity period and tenderers may accept or reject the request for extension. However, Mr. Mtobesya stated that there was no request for extension of the tender validity period. That is to say, the Tender expired on 3rd July 2024. The learned counsel elaborated that before the expiry of the tender validity period, on 25th May 2024, the Appellant received the Notice of Intention to award the Tender. The Notice stated that the Respondent intended to award the Tender to M/S Gopa Contractors Tanzania Ltd. The Notice also



informed the Appellant that its tender was disqualified for submitting a line of credit that was issued before the Tender was advertised and did not indicate the current limit of credit available to the Appellant. Dissatisfied with the reason given for its disqualification, the Appellant applied for administrative review to the Respondent on 26th May 2024.

The learned counsel contended that, after filing an application for administrative review, the Appellant never received any response thereof until on 2nd July 2024. On the said date, it received an email from the Respondent which stated that the earlier issued Notice of Intention to award was revoked and tenders were subjected to re-evaluation. The learned counsel submitted that since by 2nd July 2024 tenders were still on the re-evaluation process, it goes without saying that by the time the tender validity period expired on 3rd July 2024, the tender process was not completed. The learned counsel submitted that because the tender validity period expired on 3rd July 2024 and there was no extension of the same, all the Respondent's acts after expiry of the tender validity period were null and void in the eyes of the law. The learned Counsel therefore conceded to the point of law that there is no valid tender for determination by the Appeals Authority.

The learned counsel stated that Section 97(5) of the Act gives this Appeals Authority powers to issue various remedies as it may deem fit, depending on the prevailing circumstances. In view of the circumstances of this Appeal, the learned counsel prayed that the Appeals Authority invoke its powers vested under Section 97(5)(c) of the Act and order the Respondent



to issue the request for extension of the bid validity period with effect from 3rd July 2024 when the tender validity period expired.

In the alternative to the above prayer, the learned counsel prayed that the Appeals Authority nullify the Tender process and order the Respondent to re-start the Tender process in accordance with the law. While making this prayer, the learned counsel urged the Appeals Authority before issuing a nullification order, due consideration should be given on the time spent to process this Tender.

REPLY BY THE RESPONDENT

The Respondent's submissions were made by Mr. Andreas Whero, a Municipal Legal Officer. He commenced by stating that the tender validity period specified for this Tender was 120 days. The Tender opening took place on 5th March 2024. Counting from the Tender opening date, the tender validity period expired on 3rd July 2024. The legal officer submitted that before the expiry of the initial specified tender validity period, the Respondent through a letter dated 2nd July 2024, requested tenderers to extend the tender validity period for a further period of 60 days from 3rd July 2024 to 31st August 2024. The legal officer stated that despite the issuance of the request for extension of the tender validity period, none of the tenderers responded to the request. Thus, the tender validity period was not extended.

The legal officer stated that since the tender validity period expired on 3rd July 2024 and there was no extension of the same, the Respondent concurs with the Appellant's argument that all the subsequent acts on the



Tender that were carried out from 3rd July 2024 were a nullity in the eyes of the law. Therefore, the legal officer prayed that the Appeal be struck out with costs.

REJOINDER BY THE APPELLANT

On its brief rejoinder, the learned counsel for the Appellant objected to the Respondent's prayer that the Appeal be struck out with costs. The learned counsel submitted that the Respondent's prayer is unfair as the expiry of the tender validity period was caused by the Respondent's failure to extend the validity period in accordance with the requirements of the law. In addition, the learned counsel reiterated its submission in chief and the prayers made thereof.

ANALYSIS BY THE APPEALS AUTHORITY ON THE POINT OF LAW

1.0 Whether there is a valid Tender for determination by the Appeals Authority

In resolving this issue, the Appeals Authority took cognizance of the parties' admission that the tender validity period for this Tender had expired since 3rd July 2024. However, for purposes of enlightening the parties, the Appeals Authority proceeds to analyze this issue as hereunder.

The Appeals Authority reviewed Clauses 18.1 and 18.2 of the ITT read together with Clause 16 of the Bid Data Sheet (BDS). The referred clauses indicate that the tender validity period for this Tender was 120 days. The Appeals Authority further reviewed Section 71 of the Act which reads as follows: -



"The procuring entity shall require tenderers to make their tenders and tender securities including tender securing declaration valid for periods specified in the tendering documents, sufficient to enable the procuring entity to complete the comparison and evaluation of the tenders and for the appropriate tender board to review the recommendations and approve the contract or contracts to be awarded whilst the tenders are still valid".

(Emphasis supplied)

The above quoted provision clearly indicates that tenderers were required to make their tenders valid for a period specified in the Tender Document. In addition, a procuring entity is required to specify the tender validity period that would be sufficient to enable it to complete the evaluation of tenders. Furthermore, the time specified should be sufficient for the appropriate Tender Board to review the recommendations and approve award of the contract.

The Appeals Authority reviewed the record of Appeal and observed that the Tender opening took place on 5th March 2024 and the tender validity period specified under Clause 16 of the BDS was 120 days. Counting from 5th March 2024, the tender validity period of 120 days expired on 3rd July 2024. The Appeals Authority observed further that the Respondent through a letter dated 2nd July 2024, requested all tenderers to extend the tender validity period for an additional 60 days from 3rd July 2024 to 31st August 2024. However, the record of Appeal indicates that none of the



tenderers accepted the request for extension of the tender validity period as they were not served. Furthermore, the Respondent through a letter dated 29th August 2024, issued the second request for extension of the tender validity period to M/S Jiangxi Geo Engineering Group Corporation Ltd. However, there was no response to such a request as well.

The Appeals Authority reviewed Regulation 191(4) and (5) of the Regulations. The said provisions allow in exceptional circumstances, a procuring entity to request tenderers to extend the tender validity period of the Tender as long as such a request is made prior to the expiry of the initial specified period. In addition, the provisions give tenderers an option of either accepting or rejecting the requests for extension of the tender validity period. If a tenderer refuses or opts not to respond to the request for extension of tender validity period, its tender will be terminated upon expiry of the un-extended period. Regulation 191(4) and (5) of the Regulations read as follows: -

"191(4) *In exceptional circumstances, prior to the expiry of the original period of effectiveness of tenders, a procuring entity may request tenderers to extend the period for an additional specified period of time.*

(5) A tenderer may refuse the request under sub-regulation (3) without forfeiting its tender security and the effectiveness of its tender shall



be terminated upon expiry of the un-extended period of effectiveness.”

(Emphasis supplied)

Having observed from the record of Appeal and the parties’ own admission that the tender validity period expired on 3rd July 2024, and that there was no extension made, the Appeals Authority finds the Respondent’s acts after the expiry of the tender validity period, including the re-evaluation process and subsequent acts thereafter were not proper in the eyes of the law.

The Appeals Authority considered the Appellant’s prayer that by virtue of Section 97(5)(c) of the Act, it should order the Respondent to issue the request for extension of the tender validity period effective from 3rd July 2024 as it has powers to rectify an unlawful act by the procuring entity. The Appeals Authority observes that, since Section 71 of the Act and Regulation 191 of the Regulations are clear on the bid validity period requirement that the Tender ceases to exist upon expiry of the specified validity period, the Appeals Authority hereby rejects the Appellant’s prayer as there is no Tender which is viable for extension. The Act requires the extension to be made prior to the expiry of the bid validity period.

In view of the above findings, the Appeals Authority hereby nullifies the Tender and orders the Respondent to re-start the Tender process in compliance with the law.

Consequently, the Appeals Authority concludes the first issue in the negative that there was no valid tender for determination by the Appeals



Authority. The Appeals Authority hereby dismiss the Appeal due to expiry of the tender validity period. Each party to bear its own costs.

It is so ordered.

This Ruling 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 Ruling is delivered in the presence of the parties this 21st day of November 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI


.....
CHAIRPERSON

MEMBERS: -

1. ENG. STEPHEN MAKIGO.....

2. DR. WILLIAM KAZUNGU.....