

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 14 OF 2024 - 2025**

**BETWEEN**

**M/S CHINA JIANGXI INTERNATIONAL**

**ECONOMIC AND TECHNICAL COOPERATION**

**CO. LIMITED.....APPELLANT**

**AND**

**KAHAMA 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    |
| 3. Ms. Violet Limilabo  | - Senior Legal Officer       |
| 4. Mr. Venance Mkonongo | - Legal Officer              |

**FOR THE APPELLANT**

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



Conrad LLP

- |                     |                          |
|---------------------|--------------------------|
| 3. Mr. Prosper Mtui | - Quantity Surveyor      |
| 4. Mr. Peng Chao    | - Country representative |
| 5. Mr. Maurus Frank | - Business Manager       |

**FOR THE RESPONDENT**

- |                              |                                          |
|------------------------------|------------------------------------------|
| 1. Mr. Stephen Magalla       | - Legal Officer                          |
| 2. Ms. Elizabeth Mwakisesile | - Supplies Officer                       |
| 3. Mr. Denis Nyisaba         | - Head of Procurement<br>Management Unit |

This Appeal was lodged by **M/S China Jiangxi International Economic and Technical Cooperation Co. Ltd** (hereinafter referred to as "**the Appellant**") against **Kahama Municipal Council** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. 83P8/2023/2024/W/02 for Package 2 - Construction of Mbulu Bus Terminal, Sango Market and Zongomela Mini Bus Stand & Vendors Commercial Area in Kahama Municipality (hereinafter referred to as "**the Tender**").

The 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**") which was repealed and replaced by the Public Procurement Act, No.10 of 2023 with effect from 16<sup>th</sup> June 2024 and the Public Procurement



Regulations, GN. No. 446 of 2013 as amended (hereinafter referred to as **"the Regulations"**) which was repealed and replaced by the Public Procurement Regulations, GN. No. 518 of 2024 with effect from 01<sup>st</sup> July 2024.

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: -

On 19<sup>th</sup> 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 05<sup>th</sup> March 2024. By the deadline, the Respondent received six tenders including that of the Appellant.

The received tenders were subjected to evaluation. After completion of the evaluation process, award of the Tender was initially approved to the Appellant. On 05<sup>th</sup> June 2024, the Respondent issued the Notice of Intention to award the contract to the Appellant. The approved contract price was Tanzania Shillings Twenty-Five Billion Seventy Million Eight Hundred Fifty-Six Thousand Eight Hundred Fifty-Eight and Ninety Cents only (TZS 25,070,856,858.90) VAT exclusive for a completion period of 365 days.

According to the record of Appeal, the Respondent conducted due diligence on the Tender after issuance of the Notice of Intention to award the contract to the Appellant. When the due diligence process was completed, the Respondent issued another Notice of Intention to award the contract



on 30<sup>th</sup> September 2024. The Notice stated that the Respondent intended to award the contract to M/S Sihotech Engineering Company Ltd. The approved contract price was Tanzania Shillings Twenty-Seven Billion Four Hundred Thirty-Nine Million Six Hundred Forty-Seven Thousand One Hundred Sixty-Five and Ten Cents only (TZS 27,439,647,165.10) VAT exclusive for a completion period of 365 days.

In addition, the Notice stated that the Appellant's tender was not considered for award. This is because it submitted documents that were under the name of the company which did not participate in the Tender. Thus, it failed to comply with eligibility requirements. Aggrieved with the reason given for its disqualification, the Appellant applied for an administrative review to the Respondent on 02<sup>nd</sup> October 2024. According to the record of Appeal, the Respondent did not entertain this application for administrative review. Hence, the Appellant filed this Appeal before the Appeals Authority on 17<sup>th</sup> October 2024.

In this Appeal, the Appellant disputes the Respondent's decision of disqualifying its tender for failure to comply with eligibility requirements as the documents submitted during tendering were under the name of a company which did not participated in the Tender. The Appellant stated that Section 53(4) of the Act clearly point out that a procuring entity before concluding the contract or deciding otherwise, is required to oblige a tenderer which has been found to be the lowest evaluated to demonstrate its qualification. Thus, the Appellant contended that the Respondent did not accord it an opportunity to clarify on the alleged discrepancies in its names. Hence, its disqualification is unfair.



After receiving 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. The Appellant in establishing its compliance with eligibility requirements, it attached the documents under the name of M/S China Jiangxi International Economic and Technical Cooperation Co. Ltd, the company which did not participate in the Tender. The Respondent stated that during the due diligence process, the Appellant's tender was found to be non-responsive. As a consequence, the Appellant was disqualified in accordance with Clauses 4, 11, 17, 19, 29 and 38.2 of the Instruction to Bidders (ITB).

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 had 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 cover 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 a point of law before embarking on the substantive Appeal.

**SUBMISSIONS BY THE APPELLANT**

The Appellant's submissions were made by Mr. Jeremia Mtobesya, learned Advocate. He commenced by stating that the tender validity period for the Tender was 120 days from the Tender opening date which was on 5<sup>th</sup> March 2024. Counting from the Tender opening date, the tender validity period was to expire on 3<sup>rd</sup> July 2024. Before the expiry of the tender validity period, on 28<sup>th</sup> June 2024 the Respondent issued to all tenderers the request for extension of the bid validity period from 3<sup>rd</sup> July 2024 to 31<sup>st</sup> August 2024. The learned counsel submitted that through a letter dated 3<sup>rd</sup> July 2024, the Appellant accepted the request for extension of the bid validity period. He added that the Appellant's acceptance letter was communicated to the Respondent through email on 3<sup>rd</sup> July 2024.

The learned counsel submitted that on 28<sup>th</sup> August 2024, the Appellant received the second request for extension of the tender validity period from the Respondent. The request was for extension of the tender validity period from 31<sup>st</sup> August 2024 to 30<sup>th</sup> September 2024. The learned counsel stated that in complying with the Respondent's request, the Appellant submitted its acceptance through a letter dated 1<sup>st</sup> September



2024. The letter was submitted to the Respondent through email on the same date, the learned counsel contended.

The learned counsel submitted further that on 30<sup>th</sup> September 2024, the Appellant received a letter from the Respondent dated 26<sup>th</sup> September 2024, requesting for the third extension of the tender validity period. In the said letter, the Respondent requested tenderers to extend the tender validity period from 30<sup>th</sup> September 2024 to 31<sup>st</sup> October 2024. The Appellant accepted the Respondent's requests in this regard through a letter dated 30<sup>th</sup> September 2024. The said letter was sent to the Respondent through email on 1<sup>st</sup> October 2024, the learned counsel contended.

The learned counsel concluded his submissions on the first issue by stating that in view of the sequence of events on the Respondent's requests and the Appellant's responses on the extension of the tender validity period, it is crystal clear that the Tender is still valid. Therefore, it is eligible to be determined by the Appeals Authority.

### **REPLY BY THE RESPONDENT**

The Respondent's submissions were made by Mr. Stephen Magalla, Legal Officer. He commenced by stating that the tender validity period specified in this Tender was 120 days. The Tender opening took place on 5<sup>th</sup> March 2024. Counting from the Tender opening date, the tender validity period was to expire on 3<sup>rd</sup> July 2024. The legal officer submitted that before expiry of the initially specified tender validity period, the Respondent through a letter dated 28<sup>th</sup> June 2024, requested tenderers to extend the



tender validity period from 3<sup>rd</sup> July 2024 to 31<sup>st</sup> August 2024. Tenderers, including the Appellant accepted the request.

The legal Officer submitted that on 28<sup>th</sup> August 2024, the Respondent issued the second request for extension of the tender validity period. The extension was to be effective from 31<sup>st</sup> August 2024 to 30<sup>th</sup> September 2024. He contended that in response to the request, M/S Sihotech Engineering Company Ltd through a letter dated 1<sup>st</sup> September 2024 which was received by the Respondent on 11<sup>th</sup> September 2024 accepted the second request for extension of the tender validity period.

The legal officer submitted that on 26<sup>th</sup> September 2024, the Respondent issued the third request for extension of the tender validity period. The extension was to be from 30<sup>th</sup> September 2024 to 31<sup>st</sup> October 2024. The legal officer stated further that on 30<sup>th</sup> September 2024, the Respondent received the acceptance of the request for extension of the tender validity period from M/S Sihotech Engineering Company Ltd. He further expounded that the Appellant submitted its response on 1<sup>st</sup> October 2024 instead of 30<sup>th</sup> September 2024. The legal officer stated that since the acceptance of the third request for extension of the tender validity period was to be submitted by 30<sup>th</sup> September 2024, the Appellant's act of submitting it on 1<sup>st</sup> October 2024 clearly indicated that it failed to comply with the stipulated time limit. Thus, the Appellant's tender ceased to exist after the expiry of the second extended tender validity period.



## **REJOINDER BY THE APPELLANT**

On its brief rejoinder, the learned counsel for the Appellant submitted that, according to the Respondent, the second request for extension of the tender validity period was issued through a letter dated 28<sup>th</sup> August 2024. The extension was to be from 31<sup>st</sup> August 2024 to 30<sup>th</sup> September 2024. The Respondent in his submission stated that M/S Sihotech Engineering Company Ltd submitted its response to the request on 11<sup>th</sup> September 2024. The learned counsel stated that since tenderers were required to accept the request for extension of the tender validity period by 31<sup>st</sup> August 2024, the act of M/S Sihotech Engineering Company Ltd submitting its response on 11<sup>th</sup> September 2024 is evident that the response was submitted out of the stipulated time. Thus, the tender by M/S Sihotech Engineering Company Ltd should have been terminated after 31<sup>st</sup> August 2024 pursuant to Regulation 191(5) of the Regulations.

## **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 reviewed Clauses 18.1 and 18.2 of the ITB read together with Clause 16 of the Bid Data Sheet (BDS). The referred clauses indicated 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 are 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 conducting evaluation, for the Tender Board to review the recommendations and approve award of the contract.

In ascertaining if the Tender under Appeal is still valid, the Appeals Authority reviewed the record of Appeal. It observed that the Tender opening took place on 5<sup>th</sup> March 2024 and the tender validity period specified under Clause 16 of the BDS was 120 days. Counting from 5<sup>th</sup> March 2024, the tender validity period of 120 days was to expire on 3<sup>rd</sup> July 2024. The Appeals Authority observed that the Respondent through a letter dated 28<sup>th</sup> June 2024, requested tenderers to extend the tender validity period from 3<sup>rd</sup> July 2024 to 31<sup>st</sup> August 2024. The Appellant accepted the request through email dated 3<sup>rd</sup> July 2024.



The Appeals Authority observed further that the Respondent through a letter dated 28<sup>th</sup> August 2024, requested tenderers to extend the tender validity period from 31<sup>st</sup> August 2024 to 30<sup>th</sup> September 2024. In complying with this request, the Appellant through a letter dated 1<sup>st</sup> September 2024, submitted its acceptance to the Respondent. The record of Appeal indicates that the said letter was submitted to the Respondent through email on 1<sup>st</sup> September 2024. The Appeals Authority observed further that M/S Sihotech Engineering Company Ltd, on 11<sup>th</sup> September 2024, submitted to the Respondent its acceptance to the second request for extension of the tender validity period. The record of Appeal shows that the said letter was received and stamped by the Respondent's official stamp.

The Appeals Authority noted further that the Respondent through a letter dated 26<sup>th</sup> September 2024 which was sent to tenderers through email on 30<sup>th</sup> September 2024, requested for the third extension of the tender validity period. The extension was from 30<sup>th</sup> September 2024 to 31<sup>st</sup> October 2024. The record of Appeal indicates that the Appellant accepted the request through a letter dated 1<sup>st</sup> October 2024 which was submitted to the Respondent via email on the same date. M/S Sihotech Engineering Company Ltd also submitted its acceptance to the request on 30<sup>th</sup> September 2024.

The Appeals Authority reviewed Regulation 191(4) of the Regulations. It observed that the provision allows in exceptional circumstances a procuring entity to request tenderers to extend the tender validity period, provided



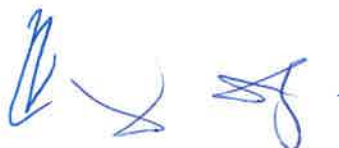
that such a request is made prior to the expiry of the initial specified period. Regulation 191(4) of the Regulations reads as follows: -

**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*"**

(Emphasis supplied)

The Appeals Authority related Regulation 191(4) of the Regulations to facts of this Appeal. It observed that before the expiry of the initial specified bid validity period on 3<sup>rd</sup> July 2024, the Respondent issued the first request for extension of the tender validity period on 28<sup>th</sup> June 2024. The extension was to be from 3<sup>rd</sup> July 2024 to 31<sup>st</sup> August 2024. The second request for extension of the tender validity period was issued by the Respondent through a letter dated 28<sup>th</sup> August 2024. The tender validity period was to be extended from 31<sup>st</sup> August 2024 to 30<sup>th</sup> September 2024. The Respondent through a letter dated 26<sup>th</sup> September 2024 issued the third request for extension of the tender validity period. The extension was to be from 30<sup>th</sup> September 2024 to 31<sup>st</sup> October 2024. In view of the sequence of events, the Respondent had been requesting the extension of the tender validity period prior to the expiry of the initially specified or extended period.

According to Regulation 191(5) of the Regulations, for a tender to be considered valid, the request for extension of the tender validity period must be accepted by the tenderers. Regulation 191(5) of the Regulations gives tenderers the option of either accepting or refusing the request for



extension of the tender validity period. If a tenderer refuses or opts not to respond to the request for extension of the tender validity period, its tender shall be terminated upon expiry of un-extended period of effectiveness. Regulation 191(5) of the Regulations reads as follows: -

191 (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 the expiry of the un-extended period of effectiveness**".

*(Emphasis supplied).*

Having related the above quoted provision to the circumstances of this Appeal, the Appeals Authority observed that after the Respondent had issued the first request for extension of the tender validity period, the Appellant responded and accepted the request through a letter dated 3<sup>rd</sup> July 2024. The letter was submitted to the Respondent via email on the same date. The record of Appeal does not indicate if other tenderers accepted the extension of the tender validity period. However, during the hearing the Respondent contended that other tenderers also accepted the request for extension.

The Appeals Authority observed further that on the second request for extension of the tender validity period, tenderers were required to extend the period of effectiveness of tenders from 31<sup>st</sup> August 2024 to 30<sup>th</sup> September 2024. In response thereof, the Appellant submitted its acceptance through a letter dated 1<sup>st</sup> September 2024. The said letter was submitted to the Respondent through email on the same date. M/S Sihotech Engineering Company Ltd also responded to the second request



for extension of the tender validity period. However, its response was submitted to the Respondent on 11<sup>th</sup> September 2024.

In view of the requirements of Regulation 191(5) of the Regulations, the Appeals Authority is of the firm view that since the second extension of the tender validity period was effective from 31<sup>st</sup> August 2024 to 30<sup>th</sup> September 2024, the Appellant's acceptance submitted on 1<sup>st</sup> September 2024 and M/S Sihotech Engineering Company Ltd's acceptance submitted on 11<sup>th</sup> September 2024 were made outside the required period. Regulation 191(5) of the Regulations requires a tender to be terminated upon expiry of un-extended period. Hence, the Appellant's act of submitting its acceptance on extension of the tender validity period a day after the specified date equally meant that no acceptance was issued. In addition, the act of M/S Sihotech Engineering Company Ltd submitting the acceptance letter eleven days after the specified date also meant the acceptance of the extension of the tender validity period was not issued. Therefore, since the acceptance of the request for extension of the tender validity period from the Appellant and M/S Sihotech Engineering Company Ltd were made beyond the required time, their tenders should have been terminated from the Tender process pursuant to Regulation 191(5) of the Regulations.

The Appeals Authority observed further that the Respondent issued the third request for extension of the tender validity period. The validity period was to be extended from 30<sup>th</sup> September 2024 to 31<sup>st</sup> October 2024. In view of the above finding, the Appeals Authority observes that the



Respondent should not have issued the third request for extension of the tender validity period as there was no valid tender in existence.

As per the record of Appeal, the Appellant and M/S Sihotech Engineering Company Ltd were the only tenderers which responded to the second and third requests for extension of the tender validity period. Given the fact that both the Appellant and M/S Sihotech Engineering Company Ltd had accepted the second request for extension of the tender validity period beyond the stipulated dates, thus their tenders should have been terminated. The Appeals Authority finds that there is no valid Tender in existence as all tenders were to be terminated after the second request for extension of the tender validity period.

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

Taking into consideration of our findings hereinabove, the Appeals Authority would not delve into the remaining issues. The Appeals Authority hereby dismiss the Appeal due to the expiry of the tender validity period and orders the Respondent to re-start the Tender process in compliance with the law.

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 22<sup>nd</sup> day of November 2024.

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



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. ENG. STEPHEN MAKIGO**.....



**2. DR. WILLIAM KAZUNGU**.....

