

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 34 OF 2024-2025

BETWEEN

M/S FORKER TECHNIEK B. V APPELLANT

AND

TANZANIA GOVERNMENT FLIGHT

AGENCY (TGFA) RESPONDENT

RULING

CORAM

- | | |
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| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Adv. Rosan Mbwambo | - Member |
| 3. Dr. William Kazungu | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Ms. Florida Mapunda | - PALS Manager |
| 2. Ms. Agnes Sayi | - Principal Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPELLANT

- | | |
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| 1. Mr. Robert Koolen | - Sales Director |
| 2. Mr. Boaz Bal | - Sales Director |



FOR THE RESPONDENT

- | | |
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| 1.Mr. Boaz Msoffe | - State Attorney - Office of the
Solicitor General (OSG) |
| 2.Mr. Edwin Webiro | - Senior State Attorney - Office of the
Solicitor General (OSG) |
| 3.Mr. Ayoub Sanga | - Senior State Attorney - Office of the
Solicitor General (OSG) |
| 4. Ms. Asia Killaghai | - State Attorney - Office of the
Solicitor General (OSG) |
| 5. Mr. Masudi Mohamed | - Head of Procurement
Management Unit (HPMU) – TGFA |

This Appeal was lodged by **M/S Forker Techniek B.V** (hereinafter referred to as "**the Appellant**") against the **Tanzania Government Flight Agency** commonly known by its acronym as "**TGFA**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. AE051/2024/2025/NC/1 for Interior Design for Aircraft 737-8 BBJ (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: -

On 30th October 2024, the Respondent invited three bidders to submit Request for Financial Proposal for the Tender. The deadline for submission of the proposals was set on 12th November 2024. All three proposals including the Appellant's were received within the deadline.



Thereafter, the received proposals were subjected to evaluation. After completion of the evaluation process, the Evaluation Committee recommended award of the Tender to M/S Lufthansa Technik AG 2235 of Hamburg, Germany. The recommended contract price was Euro Forty-Six Million only (Euro 46,000,000.00) for a completion period of 12 months.

The Tender Board approved award of the Tender as recommended by the Evaluation Committee. On 6th January 2025, the Respondent issued the Notice of Intention to award the Tender to all tenderers. The Respondent sent the said Notice of Intention to award the Tender to the Appellant on 9th January 2025 through its email address. The notice stated that the Respondent intends to award the Tender to M/S Lufthansa Technik AG 2235 of Hamburg, Germany. The recommended contract price was Euro Forty-Six Million only (Euro 46,000,000.00) for a completion period of 12 months.

Dissatisfied with its disqualification, on 10th January 2025 the Appellant applied for administrative review to the Respondent. On 28th January 2025, the Respondent issued its decision which dismissed the Appellant's application for administrative review. On 29th January 2025, the Appellant wrote another letter to the Respondent on the same subject matter. On 19th February 2025, the Respondent issued its decision which dismissed the Appellant's second application for administrative review. Aggrieved further, on 10th March 2025, the Appellant lodged this Appeal to the Appeals Authority.

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In this Appeal, the Appellant disputes the Respondent's decision of disqualifying its tender. In the lodged Appeal, the Appellant also challenged the procedural irregularity on its disqualification from the Tender process.

Upon receipt of the Appeal, the Appeals Authority notified the Respondent about the Appeal and required it to submit a Statement of Reply. In its Statement of Reply, the Respondent maintained its position that the Appellant was fairly disqualified. In addition, the Respondent raised a Preliminary Objection (PO) on a point of law to wit that: -

"The Appeal is time barred as it was filed out of 5 working days as per the requirement of Section 121(1) of the Public Procurement Act, No. 10 of 2023."

When the matter was called on for hearing, Mr. Boaz Msoffe, learned State Attorney from the Office of the Solicitor General who represented the Respondent in this Appeal, submitted that the Act has clearly stipulated the time limit within which a dissatisfied tenderer has to file an Appeal to the Appeals Authority. He stated that the Appellant having not received the Respondent's decision within the specified time limit, it was required to file an Appeal to the Appeals Authority. The Appellant was not required to wait for the Respondent's decision after the lapse of the time limit within which the decision was to be issued. The Appellant should have proceeded to file its Appeal to the Appeals Authority within five working days after the lapse of the time limit within which the Respondent ought to have issued its decision pursuant to Sections 120 (8) and 121 (1) & (2) (a) of the Public

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Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**").
Sections 120(8) and 121(1) and (2)(a) of the Act read as follows: -

*"120. -(8) Where the accounting officer **does not issue a decision within the time specified in subsection (7), the tenderer submitting the complaint or dispute to the procuring entity shall be entitled immediately thereafter to institute proceedings under section 121 and upon institution of such proceedings, the competence of the accounting officer to entertain the complaint or dispute shall cease.***

*121.- (1) A tenderer who is aggrieved by the decision of the accounting officer **may refer the matter to the Appeals Authority for appeal within five working days from the date of receipt of the accounting officer's decision.***

*(2) A tenderer may submit a complaint or dispute directly to the Appeals Authority if- (a) the accounting officer has not given a decision within the time prescribed under this Act, provided that a complaint or dispute **is submitted within five working days after expiry of the period within which the accounting officer ought to have made a decision.***"

(Emphasis added)



The learned State Attorney related the above quoted provisions of the law to the fact of the Appeal that upon the Respondent's failure to issue its decision within five working days prescribed under the law, the Appellant was required directly file its appeal to the Appeals Authority within five working days. The learned State Attorney submitted that the Appellant's application for administrative review was filed on 10th January 2025, counting from 10th January 2025, the Respondent was required to issue its decision on 17th January 2025. Having not received the Respondent's decision within five working days, the Appellant ought to have filed an Appeal to the Appeals Authority on 24th January 2025. The record of Appeal indicates that the Appellant filed this Appeal to the Appeals Authority on 10th March 2025 after lapse of clear forty five (45) days from the date it ought to have filed its Appeal. It was the State Attorney's view that the Appeal has been filed out of time and should be dismissed with costs.

The Appellant's submissions were made by Mr. Robert Koolen who conceded that the Appeal was indeed filed out of time prescribed under the law. However, the Appellant requested the Appeals Authority to consider its Appeal as a special case and not to compare it with its former issued decisions. He further stated that it was late to submit this Appeal as it needed clarifications from the Respondent which were provided on 19th February 2025.

The Appeals Authority reviewed the requirements of Sections 120(8) and 121(1) and (2)(a) of the Act quoted hereinabove. It further considered that the Appellant has conceded to the Preliminary Objection that the Appeal is

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time barred for being filed out of time prescribed under the law. From these facts, the Appeals Authority hereby upholds the Preliminary Objection and dismisses the Appeal for being improperly before it. We make no order as to costs.

It is so ordered.

This Ruling is binding and can be enforced in accordance with Section 121(7) of the Act.

The Right of Judicial Review as per Section 125 of the Act is explained to the parties.

This Ruling is delivered in the presence of both parties on this 21st day of March 2025.

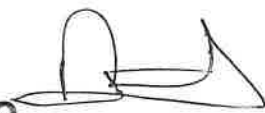
HON. JUDGE (rtd) AWADH BAWAZIR



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CHAIRPERSON

MEMBERS: -

1. ADV. ROSAN MBWAMBO



2. DR. WILLIAM KAZUNGU

