

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 45 OF 2023 - 2024

BETWEEN

M/S ZANZIBAR INSURANCE CORPORATION.....APPELLANT

AND

PUBLIC SERVICE SOCIAL

SECURITY FUND.....RESPONDENT

DECISION

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

FOR THE APPELLANT

1. Mr. Tawfiq Hassan - Legal Officer - Zanzibar
Insurance Corporations-Head Quarter
2. Mr. Kassim Haji - Branch Manager- Zanzibar Insurance
Corporation



3. Mr. Johnson Chediel - Sales Officer - Zanzibar Insurance Corporation

FOR THE RESPONDENT

1. Mr. Steven Biko - Principal Legal Officer - PSSSF
2. Ms. Kabula Malima - Principal Legal Officer - PSSSF
3. Mr. Kirondera Nyabuyenzi - Director of Procurement - PSSSF
4. Mr. Daniel Dugilo - Principal Procurement Officer- PSSSF
5. Mr. Pastory Kitende - Senior Supplies Officer - PSSSF
6. Mr. Alex Suzuguye - Regional Manager - NIC

The Appeal was lodged by **M/S Zanzibar Insurance Corporation** (hereinafter referred to as **“the Appellant”**) against the **Public Service Social Security Fund** commonly known by its acronyms as **“PSSSF”** (hereinafter referred to as **“the Respondent”**). The Appeal is in respect of Tender No. TR196/2023/2024/NC/04 for Provision of Insurance of Investment Properties (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 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 21st March 2024, the Respondent advertised the Tender through the National e-Procurement System of Tanzania (NeST). The deadline for submission of tenders was set on 4th April 2024. On the deadline, the Respondent received seven tenders including that of the Appellant.

The received tenders were subjected to evaluation. After completion of the evaluation process, the Evaluation Committee recommended award of the Tender to M/S National Insurance Corporation Tanzania Ltd. The recommended contract price was Tanzania Shillings Nine Hundred Seventy Million Eighty Six Thousand Three Hundred Sixty Four and Ten Cents only (TZS 970,086,364.10) VAT exclusive. The Tender Board approved the award of the Tender as recommended by the Evaluation Committee at its meeting held on 17th May 2024.

On 3rd June 2024, the Respondent issued the Notice of Intention to award the Tender to the Appellant. The Notice informed the Appellant that, the Respondent intends to award the Tender to M/S National Insurance Corporation Tanzania Ltd. In addition, the Notice stated that the contract price is Tanzania Shillings Nine Hundred Seventy Million Eighty Six Thousand Three Hundred Sixty Four and Ten Cents only (TZS 970,086,364.10) VAT exclusive. Lastly, the Notice informed the Appellant that its tender was not considered for award for not being the lowest at the financial evaluation stage.

Dissatisfied with the reason given for its disqualification, on 6th June 2024 the Appellant applied for administrative review to the Respondent. On 18th June 2024, the Respondent issued its decision which dismissed the



Appellant's application for administrative review. Aggrieved further, on 24th June 2024, the Appellant lodged this Appeal before the Appeals Authority.

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. Tawfiq Hassan, the Legal Officer assisted by Mr. Kassim Haji, Branch Manager from the Appellant's office. The Legal Officer submitted on the first issue by stating that a letter dated 18th June 2024 and the Statement of Reply indicated that the Respondent reached its decision of awarding the Tender to M/S National Insurance Corporation Tanzania Ltd, the successful tenderer after receiving the guidance from Tanzania Insurance Regulatory Authority (TIRA).

The Legal Officer contended that the Respondent sought guidance from TIRA on 10th June 2024 after receipt of the Appellant's application for administrative review. TIRA issued the guidance on 14th June 2024. He submitted that if there was a need for guidance the Respondent should have sought it prior to the date of Tender advertisement which was 21st March 2024. Consequently, the guidance could have been incorporated on the Tender Document.



The Legal officer contended that the Respondent should not have used the guidance from TIRA to determine the status of other tenderers as it was specifically issued for the proposed successful tenderer. Thus, the Respondent erred in law by relying on TIRA's guidance to determine matters relating to other tenderers, the Legal Officer emphasized.

The Legal Officer submitted that the proposed successful tenderer was not the lowest evaluated tenderer, thus it was not eligible for award of the Tender. The successful tenderer failed to comply with the discount rate of 35% as per the Guidelines issued by the Association of Tanzania Insurers (ATI). According to the said Guidelines, the discount rate of 35% was to be considered by each insurer prior to 1st April 2024. From 1st April 2024, the acceptable discount rate was 25%. Thus, the applicable discount rate that was to be used by tenderers when computing their premium for the Tender advertised on 21st March 2024 was 35% and not 25% as per the TIRA's guidance.

Mr. Haji, the Branch Manager elaborated that when computing the required premium, tenderers were required to consider the value of the investment properties to be insured as provided in the Tender Document against 0.15% MRO. The 35% discount rate was to be applied to the calculated price according to MRO rate to get the actual bidding price. To the contrary, the proposed successful tenderer applied a discount rate of 52% which was above the maximum discount rate of 35% in use as per the Guidelines issued by ATI.

The Branch Manager expounded further that as per the Tender Document, the value of the investment properties to be insured was TZS 1,231,855,700,000.00. He explained before the Appeals Authority on how



the premium would be calculated against 0.15% MRO and the acceptable discount rate. He concluded that the price offered by the successful tenderer indicates that it gave a discount of 47% instead of 35% as required by the Guidelines issued by ATI. Therefore, the successful tenderer's quoted price contravened the requirement of the Guidelines issued by ATI.

The Legal Officer submitted that the premium price offered by the proposed successful tenderer was unrealistic due to a huge discount offered. This implies that there was a massive undercutting which the Respondent needed to satisfy itself if the risks insured have been properly underwritten as per the tariffs provided by the Regulator. Thus, since the successful tenderer did not comply with the tariffs provided by the Regulator and ATI, it is highly doubtful if the successful tenderer would be able to cover the loss upon occurrence of the risks. In the current insurance market, there has been a lot of cases where reinsurers have failed to support the claims insured due to undercutting of premium making it difficult to recover the loss.

The Legal Officer stated further that discount rates are regulated in order to have a fair competition of insurers in the market. If the discount rates are not regulated, the same would affect the competition in the insurance market. Hence, TIRA and ATI have been mandated to regulate among other things discount rates to be applied in calculating premium, the Legal Officer contended.

According to the Legal Officer, the Appellant's quoted price was higher but the same complied with the premium and discount computation as provided by the Insurance (Minimum Premium Rates) Order, Government



Notice No. 251 published on 8th June 2018 (hereinafter referred to as “**the Minimum Premium Rates Order**”). He stated that any tenderer whose price was below the price quoted by the Appellant would not have complied with the requirements provided in the Minimum Premium Rates Order. He added that as the insurance industry is regulated by TIRA and ATI, all tenderers which participated in this Tender ought to have complied with the Guidelines issued by the regulator and the association of insurers.

The Appellant stated that the quoted premium amount was prepared based on the information availed to them by the Respondent. Hence, if all tenderers were given the same information, there would not have been a difference in the range of premium quoted by tenderers. In addition, if all tenderers computed their premium and discount based on the Minimum Premium Rates Order and Special Rates Committee norms (SRC Norms), there would not have been such differences in price quoted by tenderers.

Finally the Appellant prayed for the following reliefs: -

- i. The proposed successful tenderer should be instructed to elaborate how their premium computation was arrived at, the rate applied, the discount computations and the schedules of assets to be insured which resulted to the amount of TZS 970,086,364.10 VAT exclusive.
- ii. Award proposed to the successful tenderer be nullified for being non-compliant with the Minimum Premium Rate Order issued in 2018; and
- iii. The Respondent be ordered to award the Tender to the Appellant.

SUBMISSIONS BY THE RESPONDENT

The Respondent's submissions were led by Mr. Steven Biko, Principal Legal Officer. He commenced on the first issue by adopting the Respondent's



Statement of Reply. He went on to state that the Appellant does not deny the existence of TIRA's letter dated 14th June 2024 which provided guidance on the computation of premium and discount rates. However, the Appellant challenged the applicability of TIRA's guidance on this Tender process that was advertised on 21st March 2024 as the guidance was issued on 14th June 2024. The Principal Legal Officer submitted that much as the Tender Document was silent on the applicability of the Minimum Premium Rates Order, properties' values were provided to all the tenderers through an addendum issued following the request for clarification.

The Principal Legal Officer submitted that the Tender was conducted through NeST in accordance with the Act and its Regulations. He submitted further that all the received tenders were fairly treated and after the completion of the evaluation process, the Respondent issued the Notice of Intention to award. Upon receipt of the Notice of Intention to award and being dissatisfied with the reason given for its disqualification, the Appellant filed an application for administrative review to the Respondent. Upon receipt of the Appellant's application for administrative review, on 10th June 2024, the Respondent sought guidance from TIRA on the computation of the required premium due to the Respondent's limited knowledge in insurance matters. TIRA through a letter dated 14th June 2024, informed the Respondent that it qualified for a maximum discount rate of 25% due to the nature of risks, good physical features and claim history. TIRA added that as per MRO and SRC norms the acceptable premium discount was 25% and was to be applied by the successful tenderer and the Appellant. Thus, the successful tenderer qualified for award of the Tender.



The Principal Legal Officer stated that basing on the TIRA's guidance the successful tenderer's price of TZS 970,086,364.10 VAT exclusive complied with the Minimum Premium Rates Order. He added that the price offered by the successful tenderer had a discount rate of 19.2% that is within the range of 0-25% acceptable by TIRA. He submitted further that the proposed successful tenderer had insured the Respondent's properties for more than five years and it had not encountered any loss. He added that the Respondent had taken all measures to minimize risk including the installation of the system of fire detectors and extinguishers in all properties which are subject for insurance. Based on the previous experience and security measures that have been taken by the Respondent, the proposed successful tenderer offered the Tender price of TZS 970,086,364.10 which applied a discount rate of 19.2%. Thus, the Principal Legal Officer denied the Appellant's contention that the proposed successful tenderer had applied a discount rate of 47%.

Regarding the Appellant's contention that the price quoted by the proposed successful tenderer contravened the Guidelines issued by ATI, the Respondent stated that ATI provides guidance for insurance companies in Tanzania. However, the referred Guidelines cannot supersede the Minimum Premium Rates Order issued by TIRA which is the Insurance Regulatory Authority. As per the Minimum Premium Rates Order insurers can offer a discount of 0-25% for construction industry. In view of that fact, the Principal Legal Officer emphasized that the Appellant was not proposed for award of the Tender due to the reason that it had a higher price compared to that of the proposed successful tenderer.



In response to the Appellant's reliefs sought, the Respondent stated as follows: -

- i. That tenderers were all treated fairly and equally based on the criteria provided in the Tender Document, thus there is no need to re-evaluate the Tender; and
- ii. That the Respondent adhered to the requirements of Regulation 206(1) and (2) of the Regulations read together with the Minimum Premium Rates Order.

ANALYSIS BY THE APPEALS AUTHORITY

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

In resolving this issue, the Appeals Authority considered the Appellant's contention that it had been unfairly disqualified from the Tender process for having a higher price while its quoted price of TZS 1,193,668,168.00 complied with the discount rate of 35% as per the ATI's Guidelines. The Appellant also challenged the award proposed to the successful tenderer for the reason that its quoted price was unrealistic as it failed to comply with the discount rate provided under the ATI's Guidelines. In addition, if the successful tenderer complied with the ATI's Guidelines, it would not have quoted a tender price of TZS 970,086,364.10 VAT exclusive.

The Respondent on its part stated that, it floated the Tender under Appeal for purposes of obtaining insurance services on its properties. On the deadline for submission of tenders it received seven tenders which were subjected to evaluation. After completion of the evaluation process, the successful tenderer was found to be the lowest evaluated tenderer and recommended for award. The Respondent issued the Notice of Intention



to award the Tender which informed the Appellant that its Tender was not considered for award as it quoted a higher price. Upon being dissatisfied with the reason given for its disqualification, the Appellant filed an application for administrative review to the Respondent. When the Appellant's application for administrative review was received, the Respondent sought guidance from TIRA on computation of premium and discount rates. Following TIRA's guidance, the Respondent confirmed that the proposed award to the successful tenderer was proper and that the Appellant was fairly disqualified for having a higher price.

In ascertaining if the Appellant's disqualification was justified, the Appeals Authority reviewed the Tender Document. It observed that the Respondent specified that it intends to award a contract to a reputable insurance firm for provision of insurance services for the PSSSF residential and commercial buildings located in Dar es Salaam, Dodoma, Mwanza, Arusha, Tabora, Shinyanga and Mtwara. The Appeals Authority noted further that the Tender Document contained Terms of Reference which specified property value of the investment properties that were to be insured. The specified grand total value for all the properties was TZS 1,231,855,700,000.00.

From the facts of this Appeal, the parties' contentious arguments are in relation to the applicable discount rates on premium computation which had impact on the quoted price for this Tender. The Appeals Authority reviewed the available documents and observed that TIRA through a letter dated 5th December 2023 addressed to the Chairman of ATI approved the use of special rate norms. Having reviewed the Special Rate Committee's norms, the Appeals Authority noted that it provides guidance on the



maximum discount rate which could be applied to customers qualifying for such a discount. The norms specified the maximum discount rate in use by the time the approval was granted as 35% and from 1st April 2024 the discount would be 25%.

In order to ascertain the applicable discount rate for this Tender, the Appeals Authority reviewed the record of Appeal. It observed that the Tender advertisement was issued on 21st March 2024 and the deadline for submission of tenders was set on 4th April 2024. Since the deadline for submission of tenders was on 4th April 2024, the Appeals Authority is of the settled view that the applicable discount rate for this Tender was 25% as specified in the approved Special Rate Committees' norms.

The Appeals Authority reviewed the record of Appeal and observed that the price quoted by the successful tenderer of TZS 970,086,364.10 VAT exclusive applied a discount rate of 19.2% which is within the allowed maximum discount rate of 25% as per the approved Special Rate Committees' norms.

The Appeals Authority revisited the record of Appeal and observed that after receipt of the Appellant's application for administrative review, on 10th June 2024, the Respondent sought guidance from TIRA if the prices quoted by the successful tenderer and the Appellant complied with the guidelines issued by it. On 14th June 2024, TIRA responded to the Respondent's letter and stated that the Respondent's properties qualify for maximum discount rate of 25% due to the nature of the risks, good physical features and claims history. In addition, TIRA stated that the applicable premium discounts for this type of insurance as per the MRO and SRC norms ranged



between 0 - 25%. Thus, the same was to be applied to the successful tenderer and the Appellant.

Having considered TIRA's guidance, the Appeals Authority observed that it affirms the position that the applicable discount rate for this Tender ranges between 0- 25% as per the Special Rate Committee's norms.

The Appeals Authority considered the Appellant's contention that since the Tender was floated on 21st March 2024, the applicable maximum discount rate was 35% which was in use before 1st April 2024. The Appeals Authority reiterates its earlier finding that since the deadline for submission of tenders was 4th April 2024, the applicable maximum discount rate was 25% which commenced on 1st April 2024. The Appeals Authority observes further that if the applicable discount rate was 35% as contended by the Appellant, the same does not affect the price quoted by the proposed successful tenderer. This is due to the fact that, the successful tenderer offered a discount rate of 19.2% which was within the provided maximum discount rate as per the Special Rates Committees' norms. In view of this finding, the Appeals Authority rejects the Appellant's assertion that the proposed successful tenderer's price contained a discount rate of 47% which was above the discount rate specified by the Special Rates Committees' norms.

The Appeals Authority further considered the Appellant's contention that the Respondent ought not to have sought guidance from TIRA after the Tender had already been floated. Having reviewed the record of Appeal, the Appeals Authority observes that since TIRA is the regulator of the insurance industry in Tanzania, the Respondent's act of seeking guidance



after it had already issued the Notice of Intention to award was intended to ascertain if its decision to award the Tender to the proposed successful tenderer was proper and in accordance with the law. The letter dated 10th June 2024 from the Respondent to TIRA indicates that the Respondent intended to verify if the premium computations made by the successful tenderer and the Appellant were in accordance with the laws regulating the insurance industry. In response thereof, TIRA confirmed that the premium computations were in accordance with the law. In view of this fact, the Appeals Authority finds the Respondent's act of seeking guidance from TIRA to have not contravened the law as contended by the Appellant.

Given the above findings, the Appeals Authority finds the Respondent's act of intending to award the Tender to the proposed successful tenderer to be proper and in accordance with Regulation 212(a) of the Regulations which reads as follows: -

"212. The successful tender shall be-

- (a) ***the tender with the lowest evaluated tender price in case of goods, works or services, or the highest evaluated tender price in case of revenue collection, but not necessarily the lowest or the highest submitted price, subject to any margin of preference applied;***"

[Emphasis Supplied]

The above quoted provision states clearly that the successful tender shall be the tender with the lowest evaluated tender price in case of goods,



works or services or the highest tender price in case of revenue collection but not necessary the lowest or highest quoted price.

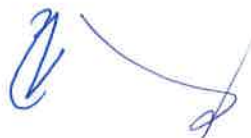
The Appeals Authority considered the Appellant's contention that parties were given different information and the same led tenderers to quote different tender prices. In ascertaining the validity of the Appellant's contention in this regard, the Appeals Authority revisited NeST and observed that all tenderers were issued with the same Tender Document. It was further observed that the Terms of Reference which was issued as an addendum to the Tender Document following the request for clarification was circulated to all tenderers which participated in the Tender. During the hearing, the Appellant confirmed to have received the issued addendum on the terms of reference. In view of this fact, the Appeals Authority rejects the Appellant's contention in this regard.

Given the above findings that the premium computation and discount rate of the proposed successful tenderer were proper and its price was lower than that of the Appellant, the Appeals Authority finds the Respondents act of disqualifying the Appellant's tender to be proper and in accordance with the law as its price was higher than that of the proposed successful tenderer.

Under the circumstances, the Appeals Authority concludes the first issue in the affirmative that the disqualification of the Appellant's tender was justified.

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

Taking cognizance of the findings on the first issue, the Appeals Authority hereby dismiss the Appeal in its entirety. The Appeals Authority rejects all



the Appellant's prayers 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 parties this 25th day of July 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI



CHAIRPERSON

MEMBERS: -

1. ENG. STEPHEN MAKIGO.....

2. DR. WILLIAM KAZUNGU.....