

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 10 OF 2024 - 2025

BETWEEN

M/S JIELONG HOLDINGS

(TANZANIA) LIMITED.....APPELLANT

AND

TANZANIA COTTON BOARD.....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. Victor Nashon | - Advocate for the Appellant |
| 2. Mr. Jie Qi | - Managing Director |



FOR THE RESPONDENT

- | | |
|----------------------------|-------------------------------|
| 1. Elizabeth Msuya | - Legal Services Manager |
| 2. Benedicto Lubengo | - Senior Procurement Officer |
| 3. Mr. Ally Songoro | - Senior Agricultural Officer |
| 4. Mr. Humphrey Mwakajinga | - Legal Officer |

M/S Jielong Holdings (Tanzania) Ltd (hereinafter referred to as **"the Appellant"**) has lodged this Appeal against the **Tanzania Co** (hereinafter referred to as **"the Respondent"**). The Appeal is in respect of Tender No. TR95/2024/2025/G/13 for Provision of Gossypium Hirsutum Seeds and Cotton Seeds Delinting Services (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 method as specified in the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as **"the Act"**) and the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as **"the Regulations"**).

Regulations").

On 31st July 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 09th August 2024. By the deadline, the Respondent received three 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 Triwin Agricultural Resources (Tanzania) Ltd. The recommended contract price was Tanzania Shillings One Billion Seventy-Three Million Eight Hundred Thousand only (TZS 1,073,800,000.00) VAT inclusive. The Tender Board approved the award of the Tender on 17th September 2024 as was recommended by the Evaluation Committee.

On 20th September 2024, the Respondent issued a Notice of Intention to Award the Tender. The Notice informed the Appellant that the Respondent intended to award the Tender to M/S Triwin Agricultural Resources (Tanzania) Ltd. In addition, the Notice stated that the Appellant's tender was disqualified for failure to comply with Manufacturer Authorization requirement as provided in the Tender Document.

Aggrieved with the reason given for its disqualification, on 23rd September 2024, the Appellant filed an application for administrative review to the Respondent. On 27th September 2024, the Respondent issued its decision which dismissed the Appellant's application for administrative review. Aggrieved further with the Respondent's decision, on 03rd October 2024, the Appellant filed this Appeal before the Appeals Authority.

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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. Victor Nashon, learned Advocate. He commenced on the first issue by stating that the Appellant

award proposed to M/S Triwin Agricultural Resources (Tanzania) Ltd due to the discrepancy in the awarded price and the quoted price. The learned counsel stated further that on 27th September 2024, the Respondent issued



a decision that reiterated its position as was contained in the Notice of Intention to award the Tender. Hence, the Respondent rejected the Appellant's application for administrative review.

The learned counsel submitted that upon being dissatisfied with the Respondent's decision the Appellant filed this Appeal. It raised two grounds; namely: misinterpretation and misapplication of the Tender requirements and breach of the principles of natural justice and fairness.

In relation to the first ground of Appeal on misinterpretation and misapplication of the Tender requirements, the learned counsel submitted that the Respondent has erred in law by misinterpreting and misapplying Clause 13.4 of the Instructions to Tenderers (ITT) which reads as follows: -

"13.4 The Documentary evidence of the Tenderer's qualifications to perform the contract, if the Tender is accepted, shall establish to the Procuring Entity's satisfaction that:

(a) in the case of a Tenderer offering to supply goods under the contract which the Tenderer did not manufacture or otherwise produce, the Tenderer has been duly authorized by the goods manufacturer or producer to supply the goods in the United Republic of Tanzania."

The learned counsel submitted that the above quoted provision states clearly that tenderers were required to submit Manufacturer Authorization after their tenders have been accepted. However, the Respondent grossly erred by interpreting the provision to mean that tenderers were required to



submit Manufacturer Authorization when submitting their tenders. In addition, the learned counsel contended that the Respondent erred in law by considering Manufacturer Authorization criterion during evaluation of tenders instead of considering it after the tender had been accepted.

The learned counsel stated further that Clause 13.4(a) of the ITT was solely applicable to a tenderer who offered to supply goods that had been manufactured by a third party. That is, if a tenderer was not a manufacturer, was required to submit Manufacturer Authorization. On the matter at hand, the Appellant is a processor and manufacturer of Gossypium Hirsutum Seeds. Thus, it was under no obligation to obtain or submit the required Manufacturer Authorization for there was no third party that was to be engaged in discharging the required activities. Therefore, the Respondent's act of determining that the Appellant's tender was non-responsive for failure to submit Manufacturer Authorization was erroneously made as it was based on improper interpretation of the tender requirements.

The learned counsel submitted that the Respondent's act of misinterpreting Clause 13.4(a) of the ITT amounted to violation of Section 87 (2) of the Act which requires evaluation of tenders to strictly adhere to the criteria set forth in the Tender Document. In addition, the Respondent's failure to properly assess the Appellant's compliance with the requirements of the Tender contravened Regulation 211 (1) of the Regulations. The referred Regulation states clearly that in order for a tender to be considered

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responsive, it must comply with all material aspects provided in the Tender Document.

The learned counsel stated that before considering the Appellant's tender non-responsive, the Respondent was required to seek clarification from the Appellant in accordance with Regulation 114 of the Regulations. Thus, the Respondent's act of disqualifying the Appellant's tender contravened Regulation 114 of the Regulations which requires clarification to be sought before disqualification of a tenderer.

The learned counsel concluded his argument on the first ground of Appeal by stating that the Appellant's tender was to be declared substantially responsive for having complied with all the material requirements of the Tender. Thus, the Respondent's decision to disqualify the Appellant's tender was procedurally flawed and legally unsustainable.

On the second ground of Appeal that the Respondent breached principles of natural justice and fairness, the learned counsel submitted that the Respondent's act of maintaining its decision that the Appellant's tender was non-responsive breached the principles of natural justice, particularly the principle of fair and equal treatment as specified under Section 5(3)(a) and

Tender criterion which resulted in an unjust exclusion from the Tender

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process. Thus, the Respondent's conduct in this regard breached the principles of natural justice and fairness, the learned counsel contended.

Finally, the learned counsel prayed to the Appeals Authority for the following reliefs: -

- a) Immediate suspension of the implementation, award, or enforcement of the contract for the Tender pending this appeal.
- b) Setting aside the Respondent's decision to disqualify the

associated expenses.

- f) Any other reliefs as deemed appropriate by the Appeals Authority.

REPLY BY THE RESPONDENT

The Respondent's submissions were led by Ms. Elizabeth Msuya, Legal Services Manager. She commenced on the first issue by addressing the first ground of Appeal that is the Respondent misinterpreted and misapplied the Tender requirements. She stated that Clause 13.4 (a) of the ITT explicitly required tenderers to submit Manufacturer Authorization at the time when they submit their tenders. She contended that the purpose of such a requirement was to ensure that tenderers have a legal right to supply the goods or provide the services from the outset. That is, the requirements which were provided in the Tender Document were to be

amongst the mandatory evaluation criteria set out in the Tender Document and intended to be applied equally to all tenders.

process. Therefore, the Respondent was justified in considering the Appellant's tender as non-responsive, Ms. Msuya contended.

On the Appellant's argument that it is a manufacturer of Gossypium Hirsutum Seeds thus exempted from submitting Manufacturer Authorization, Ms. Msuya submitted that the Appellant was not exempted from this requirement as contended. The Appellant did not provide any document which proved that it is the sole manufacturer of the goods in question. The Appellant was duty bound to submit the documents which substantiate its status as a manufacturer. Ms. Msuya submitted that from

unequally to tenderers. All the three submitted tenders were evaluated equally, fairly and competitively using the same evaluation criteria which

Ms. Msuya submitted further that Clause 4.6 of the Tender Data Sheet (TDS) emphasized on the requirement of Manufacturer Authorization. Thus, any tenderer supplying goods on behalf of a manufacturer was to submit Manufacturer Authorization which would demonstrate its legal right to supply the goods. In view of the requirements of the Tender Document, the Appellant's failure to submit Manufacturer Authorization constituted a material deviation and non-compliance with the tender requirements. Therefore, the Respondent was justified in considering the Appellant's tender as non-responsive.

in dispute would have been resolved before the deadline for submission of

for submission of all the required documents for the Tender, including the Manufacturer Authorization. Therefore, the Appellant's failure to comply with this requirement justified its disqualification.

Ms. Msuya submitted further that Section 87(2) of the Act requires evaluation of tenders to strictly adhere to the criteria set forth in the Tender Document. The Respondent's decision to disqualify the Appellant was therefore consistent with these criteria particularly Clauses 13.4 (a) of the ITT and 4.6 of the TDS. Thus, the Respondent adhered to the requirement of the law. Ms. Msuya expounded further that Regulation 211 (2)(k) of the Regulations states clearly that failure to submit major supporting documents, such as Manufacturer Authorization constitutes a material deviation which justifies the rejection of tender as non-responsive. In addition, Regulation 213(2) of the Regulations stipulates that tenders which were not responsive should not be made responsive after the deadline for submission of tenders. Therefore, the Respondent's decision to consider the Appellant's tender as non-responsive was both legally and procedurally sound.

Regarding the breach of the principles of natural justice and fairness, Ms. Msuya submitted that the Respondent applied the principle of fairness and equal treatment to all tenderers. Based on the fact that the Tender was advertised under National Competitive Tendering Method and during evaluation process each tender was evaluated on the same criteria as set forth in the Tender Document, the said principle was adhered to. In view

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of this fact, the Appellant's disqualification was not arbitrary. Instead, it was based on its failure to submit the required Manufacturer Authorization. Ms. Msuya stated further that the principle of fair and equal treatment does not allow deviations from the mandatory requirements. Thus, the Respondent treated the Appellant's tender in the same way as other tenderers when evaluating their compliance with the requirements provided in the Tender Document.

s prayed by the Appellant, Ms. Msuya submitted that since the s decision to disqualify the Appellant's tender was fairly the Appellant's prayers should be disregarded as they are and not supported by the facts and the law.

Respondent prayed that the Appeals Authority uphold the s decision to disqualify the Appellant's tender and be allowed with the Tender process.

ANALYSIS BY THE APPEALS AUTHORITY

ner the disqualification of the Appellant's tender was ed

this issue, the Appeals Authority revisited the record of Appeal. that the Notice of Intention to award stated that the

Appellant's tender was disqualified for failure to submit Manufacturer Authorization. In ascertaining if the Appellant's disqualification was

On the relief Respondent's reached, all unfounded a

Finally, the Respondent's to proceed w

1.0 Whether justified

In resolving It observed

observed that Clause 4.6 of the ITT required tenderers to submit Manufacturer Authorization as specified in the TDS. Clause 12 of the TDS which modified Clause 4.6 of the ITT stated clearly that tenderers were required to submit Manufacturer Authorization. In addition, Clause 13.4(a) of the ITT required tenderers to submit Manufacturer Authorization as a proof of being authorized to supply the goods in question by the manufacturer. Furthermore, Section IV- Qualification and Evaluation Criteria specified under Commercial Evaluation (eligibility) a requirement for tenderers to submit Manufacturer Authorization. The

*under the contract which the Tenderer did not manufacture or otherwise produce, **the Tenderer has been duly authorized by the goods manufacturer***

or producer to supply the goods in the United Republic of Tanzania.

Sec.IV Commercial Evaluation

Manufacturer Authorization (SCORE:N/A)

Tenderer supplying goods on behalf of certain manufacturing companies are required to submit this form to evidence they have been authorized by specific manufacturer to supply goods required by the procuring entity"

(Emphasis supplied)

The Appeals Authority further observed that the Tender Document provided the sample format of the required Manufacturer Authorization. In addition, NeST provided for a specific slot where tenderers were required to upload the Manufacturer Authorization.

The Appeals Authority reviewed the Appellant's tender in NeST. It observed that at the slot where it was to upload the Manufacturer Authorization, it uploaded the sample form of the Manufacturer Authorization. The uploaded form was blank.

The Appeals Authority further reviewed the Evaluation Report and observed that the Appellant's tender was disqualified at the commercial evaluation stage for failure to submit Manufacturer Authorization. According to the evaluation report this was the only reason which



disqualified the Appellant's tender. This meant, the Appellant was not subjected to technical and financial evaluation stages. It was also observed that when issuing the Notice of Intention to award, the Respondent informed the Appellant that its tender was disqualified for failure to submit Manufacturer Authorization.

The Appellant was dissatisfied with the reason given for its disqualification. Therefore, it filed an application for administrative review to the Respondent and subsequently this Appeal. The Appellant challenged the Respondent's act of disqualifying its tender for failure to submit Manufacturer Authorization. The Appellant contended that Manufacturer Authorization was required to be submitted after the tender had been accepted by the Respondent. Thus, the Appellant disputed the Respondent's interpretation of Clause 12.4(a) of the ITT to mean that

qualification. The wording of the referred provisions is crystal clear that tenderers were required by the deadline for submission of tenders, to submit the Manufacturer Authorization as a proof of being authorized to

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The Appeals Authority reviewed Section 87(2) of the Act and Regulations 211 (1) & (2) (k) and 213(2) of the Regulations which read as follows: -

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"87(2) Pamoja na kuainisha bei, nyaraka za zabuni zitaainisha vigezo ambavyo vinaweza kuzingatiwa katika kutathmini zabuni na jinsi ambavyo vigezo hivyo vinaweza kupimwa au kufanyiwa tathmini vinginevyo.

211(1) Zabuni zote zitaangaliwa kama zimekidhi vigezo na masharti ya kibiashara yaliyowekwa katika nyaraka za zabuni.

(2) Ukiukwaji ufuatao wa masharti ya msingi ya kibiashara, utahalalisha kukataliwa kwa zabuni:

(k) kushindwa kuwasilisha nyaraka muhimu zinazohitajika katika kubaini zabuni iliyokidhi vigezo kama ilivyoanishwa kwenye nyaraka za zabuni.

not subsequently be made responsive by correction or withdrawal of the deviation or reservation.

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The Appeals Authority is also of the considered view that had the Appellant found the requirement to submit Manufacturer Authorization not clear or ambiguous, it ought to have sought for clarification in accordance with

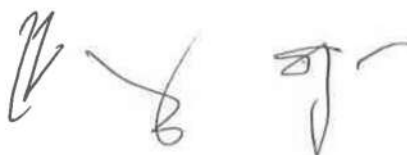


Clause 8 of the ITT. However, the Appellant did not do so. The Appellant's act of submitting its tender without seeking clarification, implied that it was ready to be bound by all the terms and conditions of the Tender. Thus, its disqualification for failure to submit the Manufacturer Authorization is proper under the circumstances of this Appeal.

Given the above findings that the Appellant's tender was fairly disqualified for failure to submit Manufacturer Authorization, the Appeals Authority concludes the first issue in the affirmative that the disqualification of the Appellant's tender is justified.

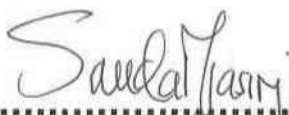
2. What reliefs if any, are the parties entitled to?

Taking cognizance of the above findings, the Appeals Authority hereby dismiss the Appeal for lack of merit. The Respondent is ordered to proceed

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This decision is delivered in the presence of the parties this 25th day of October 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI



CHAIRPERSON

MEMBERS: -

1. ENG. STEPHEN MAKIGO.....

2. DR. WILLIAM KAZUNGU.....