

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**FOR THE APPELLANT**

1. Mr. Jeremia Mtobesya

- Advocate Sweet and

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

Conrad LLP  
- Quantity Surveyor  
- Country representative  
- Business Manager

#### **FOR THE RESPONDENT**

1. Mr. Stephen Magalla
2. Ms. Elizabeth Mwakisesile
3. Mr. Denis Nyisaba

- Legal Officer  
- Supplies Officer  
- Head of Procurement  
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

**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and the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to as "**the Act**") which was repealed and replaced by the Public Procurement Act, No.10 of 2023 with effect from 16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 No. 446 of 2013 as amended (hereinafter referred to as "**the Regulations**") which was repealed and replaced by the Public Procurement Regulations, GN.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

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

A handwritten signature in black ink, consisting of a stylized 'A' followed by a series of loops and a final flourish.

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

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.

A handwritten signature in black ink, appearing to be a stylized 'J' followed by a flourish and a period.

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;**

The image shows several handwritten signatures and initials in black ink at the bottom of the page. There are four distinct marks: a stylized 'J' or 'L' on the left, a large 'S' or 'Z' in the center, a crossed-out signature in the middle-right, and a cursive signature on the far right.

## 2.0 Whether the disqualification of the Appellant's tender was

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

A handwritten signature in black ink, appearing to be 'J. S. S.', is located at the bottom center of the page.



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 request

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

after the expiry of the second extended tender validity period.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a checkmark-like flourish and a final loop.



### **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

of the Act which reads as follows: -

***"The procuring entity shall require tenderers to make their***

*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

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

Handwritten signature and initials in black ink, consisting of a large stylized 'S' and a smaller 'E'.

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***"

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

Handwritten signature or initials in black ink, consisting of a stylized 'Z' or 'S' shape followed by a flourish.



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

reads as follows: -

under sub regulation (3)  
the effectiveness of its  
the expiry of the un-

the circumstances of this  
er the Respondent had  
nder validity period, the  
rough a letter dated 3<sup>rd</sup>  
ondent via email on the  
licate if other tenderers  
d. However, during the  
derers also accepted the

the second request for  
were required to extend  
st August 2024 to 30<sup>th</sup>

effectiveness. Regulation 191(5) of the Regulation

191 (5) "A tenderer may refuse the request  
without forfeiting its tender security and the  
tender shall be terminated upon the  
extended period of effectiveness".

(Emphasis supplied).

Having related the above quoted provision to the  
Appeal, the Appeals Authority observed that after  
issued the first request for extension of the tender  
Appellant responded and accepted the request through  
July 2024. The letter was submitted to the Respondent  
same date. The record of Appeal does not indicate  
accepted the extension of the tender validity period.  
hearing the Respondent contended that other tenderers  
request for extension.

The Appeals Authority observed further that on the  
extension of the tender validity period, tenderers  
the period of effectiveness of tenders from 31<sup>st</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

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

It is so ordered.

This Ruling is binding and can be enforced in accordance with Section 97(8) of the Act.



