

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 15 OF 2023-24

BETWEEN

M/S GIESECKE+DEVRIENT CURRENCY

TECHNOLOGY GMBH MUNICH GERMANY.....APPELLANT

AND

BANK OF TANZANIA.....RESPONDENT

ORDER

CORAM

1. Hon. Justice (rtd) Souda Mjasiri - Chairperson
2. Adv. Rosan Mbwambo - Member
3. Eng. Stephen Makigo - Member
4. Mr. James Sando - Secretary

SECRETARIAT

1. Ms. Florida Mapunda - Deputy Executive Secretary
2. Ms. Violet Limilabo - Senior Legal Officer

FOR THE APPELLANT

1. Mr. Peter Clavery - Advocate, Dentons EALC East African Law Chambers

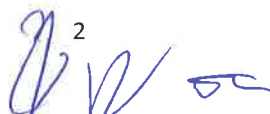


FOR THE RESPONDENT

1. Mr. Ayoub Sanga - State Attorney, Office of Solicitor General
2. Ms. Jackline Kinyasi - State Attorney, Office of Solicitor General
3. Mr. Deodath Mushi - Senior State Attorney, BOT
4. Mr. Amedius Shayo - Senior State Attorney, BOT
5. Ms. Bumi Mwamfupe - State Attorney, BOT
6. Mr. Edward Mwaluko - Chairperson, Evaluation Committee
7. Mr. Clay Apiyo - Procurement Manager
8. Mr. Ilulu Ilulu - Manager, Currency Operations
9. Mr. Keneth Nchimbi - Manager, Budget and Financier Reporting
10. Mr. Magnus Mlokota - Senior Procurement Officer
11. Mr. Wilson Kitaa - Procurement Officer

M/S GIESECKE+DEVRIENT CURRENCY TECHNOLOGY GMBH, MUNICH GERMANY (hereinafter referred to as "**the Appellant**") has lodged this Appeal against the **BANK OF TANZANIA** commonly known by its acronym as "**BOT**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. PA/082/2022-2023/DSM/G/64 for Re-Print and Supply of Banknotes at the Bank of Tanzania – Dar es Salaam (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 International 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 24th March 2023, the Respondent floated the Tender through the Tanzania National electronic Procurement System (TANePS). The deadline for submission of tenders was set on 17th April 2023. On the deadline, the Respondent received five tenders including that of the Appellant.

The received tenders were subjected to evaluation. After completion of the evaluation and other internal processes, the Respondent notified tenderers through the Notice of Intention to award dated 21st August 2023 that it intends to award the Tender to: -

- i) M/S Crane Currency Malta Ltd, Lot 1, at the negotiated contract price of Euro Fifty Seven Million Three Hundred Ninety Six Thousand Two Hundred Ninety Six and Twenty Five Cents only (Euro 57,396,296.25).
- ii) M/S De La Rue International Limited, Lots 2, 3 and 4 at the negotiated contract prices of British Pound Thirty Eight Million Three Hundred Seventy Six Thousand (GBP 38,376,000.00), Twenty Million Twenty Thousand (GBP 20,020,000.00) and Twenty Three Million One Hundred Seventy Two Thousand Five Hundred only (GBP 23,172,500.00), respectively.




The Notice of Intention to award also informed the Appellant that its tender was disqualified for failure to comply with Item 3.1 of Section IV- Qualification and Evaluation Criteria. This criterion required tenderers to have an average current ratio of 1.5:1. According to the Respondent, the Appellant's current ratio was 1.45:1. Thus, its Tender was found to be non-responsive.

Dissatisfied with the reason given for its disqualification, the Appellant through a letter dated 24th August 2023, applied for administrative review to the Respondent. The Respondent claimed to have received the Appellant's application for administrative review on 27th August 2023. On 1st September 2023, the Respondent issued its decision which rejected the Appellant's application for administrative review. Aggrieved by the decision, on 08th September 2023, the Appellant lodged this Appeal before the Appeals Authority.

The Record of Appeal indicates that on 9th October 2023, parties were notified that this Appeal would be heard on 16th October 2023. On Friday 13th October 2023 at 19:21 hours the Appellant wrote an email to this Appeals Authority indicating its intention to withdraw the Appeal. Since the email was sent beyond working hours, the Appeals Authority saw the same on Monday 16th October 2023, the date set for hearing.

When the Appeal was called on for hearing, Mr. Peter Clavery, learned counsel for the Appellant stated that, on Friday 13th October 2023 the Appellant filed a notice of withdrawal of Appeal to the Appeals Authority. The notice was filed pursuant to Rule 16(2) of the Public Procurement

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Appeals Rules, GN. No. 411 of 2014, as amended (hereinafter referred to as "**the Appeals Rules**").

The learned counsel submitted that the notice of withdrawal of the Appeal was filed because the Appellant was no longer interested to pursue the Appeal. In view of the above, the learned counsel prayed for the withdrawal of the Appeal. The learned counsel stated that since the notice of withdrawal of the Appeal was filed on Friday 13th October 2023, that is three days before the hearing date, the Appellant should not be subjected to the penalty of Tanzania Shillings One Million (TZS 1,000,000.00).

Mr. Ayoub Sanga, learned State Attorney from the Office of the Solicitor General, represented the Respondent in this Appeal. He stated that the Respondent was not aware of the withdrawal notice as the same was not served to the Respondent. The learned State Attorney also submitted that the notice of withdrawal filed on 13th October 2023 while the hearing was on 16th October 2023, did not comply with the requirement of Rule 16(2) of the Appeals Rules which requires the notice to be filed three days before the hearing date. The learned State Attorney submitted that if the Appellant was not interested to pursue the Appeal, it should pray for the withdrawal of the same at the time the Appeal is called for hearing pursuant to Rule 16(4) of the Appeals Rules. Consequently, the Respondent did not object the Appellant's prayer of withdrawing the Appeal. However, it prayed for costs.

Having considered parties' arguments, the Appeals Authority is in agreement with the Respondent's position that the notice to withdraw the

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Appeal did not comply with Rule 16(2) of the Appeals Rules which reads as follows: -

"16(2) Notwithstanding sub-rule (1) a notice of withdrawal of the appeal shall be lodged to the Appeals Authority at any time but not later than three days before the hearing date".

(Emphasis added)

In view of above, the Appeals Authority considered the Appellant's prayer to withdraw the Appeal to have been made during the hearing. Therefore, the Appeals Authority orders the Appellant to pay Tanzania Shillings One Million (1,000,000.00) being a penalty for contravening Rule 16(2) of the Appeals Rules. The payment of penalty is ordered pursuant to Rule 16(6) of the Appeals Rules which reads as follows: -

"16(6) The Appellant shall be liable to pay penalty as set out in the Second Schedule to these Rules for contravening sub-rule (2)".

In effecting the order for payment of a penalty, the Appellant was issued with the Control Number 995940002687. The Appellant effected payment through exchequer receipt Number 923290208748884.

Given the circumstances, the Appeals Authority hereby marks the Appeal as withdrawn with no order as to costs.

It is so ordered.

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This Order is dated this 19th day of October 2023.

HON. JUSTICE (rtd) SAUDA MJASIRI



.....
CHAIRPERSON

MEMBERS: -

1. ADV. ROSAN MBWAMBO.....



2. ENG. STEPHEN MAKIGO.....

