Sarkozy Limited - **Complainant**

Vs.

Ghana Airports Company Limited - **Respondent**

Tender

Supply of Rescue Equipment for the Rescue Fire Fighting Services
(Tender No. GR/GACL/GD/0001/2008)

BRIEF FACTS

Sarkozy Limited (the Complainant) purchased tender documents from Ghana Airports Limited (the Respondent) for the supply of rescue equipment for firefighting services.

The Complainant alleged that the tender document contained certain anomalies including the following:-

- Specification on page 45 - did not indicate the brand for the rescue tools.
- Page 46 under accessories - the brand name "AMK package' was specified.
- Page 50 no 7 under CO2 - weight of the required Extinguishers were not prescribed
- Page 51 - specifications for the Command Control Van was not indicated.
- Page 52 - the brand name "**Amkus**" with serial numbers was stated.
- On page 53 - the brand name "**Vetter**" with serial numbers was specified lifting bags and gauges.

Complainant concluded from the frequent mention of Amkus and Vetter brands that the entity preferred these brand products. Being a representative of Holmatro Company of Netherlands, which brand was not mentioned in the tender document, Complainant requested the Respondent to amend the document by deletion of all reference to the brand names, threatening in the alternative, to withdraw from the tender process.

Complainant alleged that attempts to rectify the anomalies yielded no positive results. By letter dated 18th August, 2008 Complainant appealed to the Authority for administrative review under the relevant provisions of the Public Procurement Act, 2003, Act 663.

ISSUES

1. Whether a procurement entity could use brand names in its tender specifications.
2. Whether Complainant qualified to institute Administrative Review under section 78 of Act 663.

APPLICABLE PROVISIONS OF ACT 663

Sections 33 (2) - *Description of Goods, Works or Services;*
51 (1) & (2) - *Clarifications and Modifications of Tender Documents;* and
78 - Right to Review of Act 663

CASE DELIBERATION/FINDINGS

1. The Authority per the Appeals & Complaints Panel (the Panel) found that Complainant's case clearly fell within the ambit of section 33 (2) of the Public Procurement Act, 2003 (Act 663) which prohibits the reference to particular brand names in writing specifications.

2. Section 33(2) requires that where there is no precise way of describing the characteristics of the items being procured then the mention of the brand names must be followed by the words "or equivalent". In the present case, and for purposes of standardization the Respondent was constrained to indicate the brands "AMKUS and VETTER", the words "or equivalent" should have followed. .

3. Respondent contravened section 33 (2) of Act 663 by limiting its specifications to the brand names AMKUS and VETTER, respectively, which in turn limited the prospective tenderer from participating in the tender. It was noted that if Respondent was constrained by the need to purchase specialized standard parts, it could have fallen on other options under Act 663 without necessarily opening tender.

4. On whether the Complainant was sufficiently qualified to request for administrative review, the Authority agreed that Complainant was a 'prospective' tenderer interested in participating in this particular tender and therefore qualified to apply for Administrative Review. It was possible for a prospective tenderer (interested in participating in a particular tender) to suffer adversely from an entity's breach of duties imposed by Act 663, hence the opportunity to seek administrative review – such as the present case – where the limitation of specifications to a particular brand name, contrary to section 33 (2), effectively excluded the Complainant and its products from participation in the tender.

5. The Respondent should have addressed Complainant's concerns in accordance with the provisions of section 51 – *Clarifications and Modifications to Tender Documents* – of the Public Procurement Act, Act 663. The Complainant raised its query well before the submission deadline, which should have been addressed and all other tenderers informed accordingly.

6. It however transpired that Complainant had no case since it ultimately chose not to participate in the tender.

DECISION

On the totality of the evidence submitted, the Authority decided as follows:-

1. The Respondent contravened section 33 (2) of Act 663 by listing the brand names AMKUS and VETTER in its tender specifications.

2. The Respondent further erred by not addressing the Complainant's query as enjoined by section 51 of Act 663.

3. The Complainant was a prospective tenderer qualified to apply for Administrative Review.

4. In accordance with section 80 (3) (g) of Act 663, the Respondent is hereby ordered to cancel the procurement proceedings (if not concluded) and re-launch the tender either with compliant specifications or by appropriate application with requisite justification under section 40 of Act 663 if standardization is key.