

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 33 OF 2022-23

BETWEEN

M/S M & S LIMITED.....APPELLANT

AND

ELECTRICAL TRANSMISSION AND DISTRIBUTION

CONSTRUCTION AND MAINTENANCE LIMITED.....RESPONDENT

ORDER

CORAM

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| 1. Hon. Justice (rtd) Souda Mjasiri | - Chairperson |
| 2. Mr. Rhoben Nkori | - Member |
| 3. Dr. William Kazungu | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

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

FOR THE APPELLANT

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| 1. Ms. Neema Cuthibet | - Advocate - Legal Solution Attorneys |
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FOR THE RESPONDENT

- | | |
|---------------------|-------------------------|
| 1. Mr. Mohamed Issa | - Procurement Manager |
| 2. Mr. Abel Mollel | - Procurement Principal |



3. Mr. Sepetu Nyembo - Finance Manager
4. Mr. Ebenezer Fue - Principal Planning Engineer.

The Appeal was lodged by M/S M & S Limited (hereinafter referred to as "**the Appellant**") against Electrical Transmission and Distribution Construction and Maintenance Limited (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. PA/146/2022-23/HQ/G/02 for Supply of ABC Conductors under Framework Contract (hereinafter referred to as "**the Tender**"). The Tender had Seven Lots and the Appellant participated in all Lots.

According to the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**") the background of this Appeal may be summarized 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 6th September 2022, the Respondent through Tanzania National electrical Procurement System (TANePS) invited eligible tenderers to participate in the Tender. The deadline for submission of tenders was set for 28th September 2022. On the deadline, fourteen (14) Tenders were received including that of the Appellant.

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Tenders were then evaluated accordingly. After completion of the evaluation process, the Evaluation Committee recommended award of the contract to the following tenderers:-

- i. M/S Multi Cable Ltd at the contract price of Tanzanian Shillings Four Billion Four Hundred Fifty Five Million Seven Hundred Seventy Four Thousand Four Hundred (4,455,774,400.00) only VAT inclusive for Lot 1 and Tanzanian Shillings Four Billion Six Hundred Twelve Million Five Hundred Two Thousand (4,612,502,000.00) only VAT inclusive for Lot 7.
- ii. M/S Everwell Cable and Engineering Company Limited at the contract price of Tanzanian Shillings Five Billion One Hundred Ninety Two Million Three Hundred Seventy Seven Thousand Six Hundred (5,192,377,600.00) only VAT inclusive for Lot 2 and Tanzanian Shillings Five Billion One Hundred Ninety Two Million Three Hundred Seventy Seven Thousand Six Hundred (5,192,377,600.00) only VAT inclusive for Lot 4.
- iii. M/S Volex Electrical and Decorators Limited at the contract price of Tanzanian Shillings Five Billion One Hundred Sixty Nine Million One Hundred Sixty Nine Thousand Five Hundred Eighty Four and Twenty Cents (5,169,169,584.20) only VAT inclusive for Lot 3 and Tanzanian Shillings Four Billion Three Hundred twenty Five Million Eight Hundred Eighty Three Thousand Five Hundred and Six (4,325,883,506.96) only VAT inclusive for Lot 6.



- iv. M/S Elsewedy Electric East Africa Limited at the contract price of Tanzanian Shillings Four Billion One Hundred Eighty Four Million Ninety Six Thousand Nine Hundred Eighty Seven and Ninity Cents (4,184,096,987.90) only VAT inclusive for Lot 5.

The Tender Board through Circular Resolution No. 227/11/2022 approved the award as recommended by the Evaluation Committee.

On 9th January 2023, the Respondent issued the Notice of Intention to award the Tender to all tenderers who participated in the Tender process. The Notice also informed the Appellant that its tender was disqualified for the reasons that:-

- i. It submitted a bid security guarantee which is valid only for 28 days instead of 148 days contrary to Clauses 11.1 and 18 of the Instructions To Tenderers (ITT).
- ii. It did not submit VAT registration certificate contrary to Clause 11.1 of the ITT.
- iii. It indicated experience of M/S Henan Huadong Cable Group instead of its own experience.

Dissatisfied, on 13th January 2023, the Appellant applied for administrative review to the Respondent challenging the reasons for its disqualification. On 23rd January 2023, the Respondent issued its decision which dismissed the Appellant's application for administrative review. The letter was received by the Appellant on 7th February 2023.

Aggrieved further, on 17th February 2023 the Appellant filed this Appeal to the Appeals Authority.

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When the Appeal was called on for hearing, Ms. Neema Cuthibet, learned advocate for the Appellant prayed for the withdrawal of the Appeal as it was no longer interested to pursue the matter pursuant to Rule 16(4) of the Public Procurement Appeals Rules GN. No. 411 of 2014, as amended (hereinafter referred to as "**the Appeals Rules**"). Mr. Mohamed Issa, Procurement Manager for the Respondent did not object to the Appellant's prayer.

In view of the above, the Appeals Authority granted the prayer for withdrawal and ordered the Appellant to pay Tanzanian Shillings One Million (1,000,000.00) being withdrawal fees according to Rule 16(6) of the Appeals Rules. Thus, the Appellant was issued with the Control Number 995940001907 to effect payment. The Appellant effected payment through exchequer receipt Number 923074166500661.

Based on that development, the Appeals Authority hereby marks the Appeal as withdrawn with no order to costs.

It is so ordered.

This Order is delivered in the presence of the parties this 15th day of March 2023.

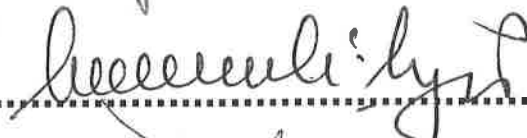
JUSTICE (rtd) SAUDA MJASIRI



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CHAIRPERSON

MEMBERS:

1. MR. RHOBEN NKORI



2. DR. WILLIAM KAZUNGU.....

