

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 23 OF 2022-23

BETWEEN

M/S NEEM SALHA COMPANY LTDAPPELLANT

AND

TANZANIA MEDICINES AND MEDICAL DEVICES

AUTHORITY.....RESPONDENT

ORDER

CORAM

- | | |
|-------------------------------------|---------------|
| 1. Hon. Justice (rtd) Sauda Mjasiri | - Chairperson |
| 2. Ms. Ndeonika Mwaikambo | - Member |
| 3. Mr. Rhoben Nkori | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|------------------------|------------------------|
| 1. Ms. Florida Mapunda | - DST |
| 2. Ms. Violet Limilabo | - Senior Legal Officer |

FOR THE APPELLANT

Absent

FOR THE RESPONDENT

- | | |
|------------------------|---|
| 1. Mr. Iskari Fute | - Principal State Attorney- TMDA |
| 2. Ms. Donatha B. Koko | - Head of Procurement Management
Unit (HPMU) |



3. Dr. Seifu S. Magayane - Member of Evaluation Committee
4. Ms. Esther Sanga - Member of Evaluation Committee
5. Mr. Sigifrid Mtey - Member of Evaluation Committee
(Site Visit)

This Appeal was lodged by **M/S Neem Salha Company Ltd** (hereinafter referred to as "**the Appellant**") against the **Tanzania Medicines and Medical Devices Authority** commonly known by its acronym as **TMDA** (hereinafter referred to as "**the Respondent**").

The Appeal is in respect of Tender No. AE/005/2022-23/HQ/NC/01 LOT 1 for Provision of Catering Services for TMDA HQ Sub Office in Dar es Salaam (hereinafter referred to as "**the Tender**").

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: -

On 3rd September 2022, the Respondent through the Tanzania National e-Procurement System (TANePS) invited tenderers with Framework Agreement with Government Procurement Supplies Agency (GPSA) to participate in the Tender. The deadline for submission of tenders was set for 9th September 2022 at 10:00 hours. By the deadline, twelve (12) tenderers submitted their tenders, including the Appellant.

The received tenders were then subjected to evaluation which was conducted into three stages namely; preliminary, technical and financial evaluation. At the preliminary evaluation stage ten (10) tenders were



disqualified for failure to comply with requirements of the Tender Document. The remaining two tenders were subjected to technical and financial evaluation. After completion M/S Aikama Investment Limited emerged to be the lowest evaluated tenderer. The Evaluation Committee recommended it for award of the Tender at the contract price of TZS 211,152,000.00 (Two Hundred Eleven Million One Hundred Fifty Two Thousands only) VAT inclusive, subject to post qualification.

Minutes of the Tender Board meeting held on 3rd and 4th November 2022 indicates that the negotiation report revealed that M/S Aikama Investment Limited was found to be non-responsive after it was observed that its site for preparation of food did not show the level of compliance with the requirement of the Tender Document. The Procurement Management Unit recommended the award to be made to the second lowest evaluated tenderer M/S Masi Catering Services at the contract price of TZS 373,739,040.00 (Three Hundred Seventy Three Million Seven Hundred Thirty Nine Thousand and Forty only) VAT inclusive. After deliberations the Tender Board approved award of the Tender to M/S Masi Catering Services as recommended.

On 13th December 2022, the Respondent issued a Notice of Intention to award the Tender to all tenderers who participated in the Tender. The Notice informed the tenderers that the Respondent intends to award the contract to M/S Masi Catering Services. The Notice also informed the Appellant that its tender was disqualified for failure to submit a valid premises registration certificate from Tanzania Bureau of Standards (TBS) as required in the Tender Document.



Dissatisfied with the reason given for its disqualification, on 15th December 2022, the Appellant applied for administrative review to the Respondent. On 20th December 2022, the Respondent issued its decision which rejected the Appellant's application for administrative review. The said decision indicated that the Appellant was disqualified not only for failure to submit TBS premises registration certificate but also for submitting invalid business licence and invalid Occupational Safety and Health Agency (OSHA) certificate both from Zanzibar contrary to the requirements of the Tender Document.

On 22nd December 2022, the Appellant wrote another letter to the Respondent stating to have submitted TBS premises registration certificate for its sub-office at Ilemela Mwanza which was not fatal as the Tender Document did not state categorically that TBS and OSHA regional certificates were to be supplied. However, the said letter was not responded by the Respondent. Aggrieved further, on 27th December 2022 the Appellant filed this Appeal to the Appeals Authority.

The Appellant was served with the Notice of Hearing (PPAA Form No. 3) on 17th January 2023 that is seven days before the hearing date as prescribed under Rule 18 of the Public Procurement Appeals Rules of 2014 as amended (hereinafter referred to as "**the Appeals Rules**"). The Appellant also acknowledged receipt of the Notice of hearing as it signed PPAA Form No. 3. Rule 18 provides as follows: -



Rule 18(1) After submission of all the required statements by the parties, the Executive Secretary shall issue a seven days notice of hearing to the parties;

(2) A notice of hearing shall be signed by the Executive Secretary and served upon the parties using Form PPAA No. 3 as set out in the First Schedule to these Rules;

(3) A person served with a notice of hearing shall endorse each copy of the notice and return a copy to the Executive Secretary; and

(4) Endorsement of notice by the person served shall be sufficient proof of service."

When the matter was called on for hearing on 25th January 2023, the Respondent appeared while the Appellant was absent without providing any justifiable reason for its absence.

The counsel for the Respondent asked the Appeals Authority to dismiss the Appeal for non appearance of the Appellant under Rule 21 of the Appeals Rules. Rule 21(1) and (2) of the Appeals Rules provides as follows: -

"Rule 21 (1) Where the respondent appears and the appellant does not appear on the scheduled time on the date fixed for hearing and if it is proved that the notice was duly served but the appellant failed to appear on time for no



justifiable cause, the Appeals Authority shall make an order dismissing the appeal.

(2) Where the appeal has been dismissed pursuant to sub-rule (1), the appellant is barred from re-instituting the appeal through an application to file an appeal out of time. "

Based on the above quoted provision and taking into consideration that the Appellant was served with the Notice of hearing but failed to appear without any justifiable cause, the Appeals Authority hereby dismiss the Appeal for non appearance of the Appellant. Each party to bear its own costs.

It is so ordered.

Order is delivered this 25th day of January 2023.

HON. JUSTICE (rtd) SAUDA MJASIRI



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CHAIRPERSON

MEMBERS:

1. MS. NDEONIKA MWAIKAMBO

2. MR. RHOBEN NKORI