

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 16 OF 2022-23**

**BETWEEN**

**M/S BLESSED HO TANZANIA LTD.....APPELLANT**

**AND**

**UNIVERSITY OF DAR ES SALAAM.....RESPONDENT**

**DECISION**

**CORAM**

- |                                     |                 |
|-------------------------------------|-----------------|
| 1. Hon. Justice (Rtd) Souda Mjasiri | - Chairperson   |
| 2. Ms. Ndeonika Mwaikambo           | - Member        |
| 3. Dr. William Kazungu              | - Member        |
| 4. Ms. Florida Mapunda              | - Ag. Secretary |

**SECRETARIAT**

- |                        |                        |
|------------------------|------------------------|
| 1. Ms. Violet Limilabo | - Senior Legal Officer |
|------------------------|------------------------|

**FOR THE APPELLANT**

- |                         |                          |
|-------------------------|--------------------------|
| 1. Mr. Lusajo Mwakasege | - Senior Legal Officer   |
| 2. Mr. Hillary Jared    | - Managing Director      |
| 3. Mr. Emmanuel Kipaye  | - Administrative Officer |

**FOR THE RESPONDENT**

- |                               |                       |
|-------------------------------|-----------------------|
| 1. Mr. Petro Eusebius Mselewa | - Advocate- UDSM      |
| 2. Ms. Zabibu Swima           | - Manager - USAB      |
| 3. CPSP Paul Riziki           | - Procurement Officer |



M/S Blessed HO Tanzania Ltd (hereinafter referred to as "**the Appellant**") has lodged this Appeal against the University of Dar es Salaam (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. PA/011/2021/2022/NC/08 for Lease of Running Cafeteria II Canteen at the University of 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: -

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 27<sup>th</sup> May 2022, the Respondent through Tanzania National electronic Procurement System (TANePS) invited eligible tenderers to participate in the Tender. The deadline for submission of tenders was set for 13<sup>th</sup> June 2022. On the deadline seven tenders were received including that of the Appellant.

Tenders were then subjected to evaluation. After completion of the evaluation process, the Evaluation Committee recommended award of the Tender to M/S Vila Catering at the contract price of TZS 4,800,000.00 (Tanzanian Shillings Four Million Eight Hundred Thousand only) VAT exclusive per month during academic season and TZS 500,000.00 (Five Hundred Thousand only) VAT exclusive per month during vacation season.



The Tender Board at its meeting held on 10<sup>th</sup> August 2022, approved the award of the Tender to M/S Vila Catering as recommended by the Evaluation Committee.

On 22<sup>nd</sup> August 2022, the Respondent issued the Notice of Intention to award the Tender to all tenderers who participated in the Tender. The Notice informed tenderers that it intends to award the Tender to M/S Vila Catering. The Notice also informed the Appellant that its tender was disqualified for failure to attach a form of integrity in the format provided for in the Tender Document.

Dissatisfied with the reason given for its disqualification, on 5<sup>th</sup> September 2022, the Appellant applied for administrative review to the Respondent. The Appellant's applications for administrative review was not responded by Respondent. Aggrieved further, on 16<sup>th</sup> September 2022, the Appellant filed this Appeal to the Appeals Authority.

### **GROUND OF APPEAL**

On its Statement of Appeal the Appellant challenged the reason given for its disqualification on the ground that it attached to its tender the integrity Form in the format provided for in the Tender Document. In substantiating that it submitted the integrity form, the Appellant attached to its Statement of Appeal signed Forms of Integrity in Format 1 and 2 as provided in the Tender Document. The Appellant therefore claimed to have been unfairly disqualified from the Tender process.

The Appellant contended further that since it quoted the highest price of TZS 5,688,948.72 (Tanzania Shillings Five Million Six Hundred Eighty



Eight Thousand Nine Hundred Forty Eight and Cents Seventy Two only) compared to other tenderers, it ought to have been proposed for award of the Tender.

With regard to the reliefs, the Appellant prayed for an order that the reason given for its disqualification be rejected and the Appellant be declared as a successful tenderer as it complied with the requirement of the Tender Document. The Appellant also prayed that the costs of Appeal be borne by the Respondent.

### **REPLY BY THE RESPONDENT**

In reply to the grounds of Appeal the Respondent indicated that the Appellant's tender was disqualified from the Tender process for failure to attach the Form of Integrity in the format provided for in the Tender Document. The Appellant attached to its tender an anti-bribery policy of its company which did not bear the name and title of the signatory. The Respondent indicated that submission of anti-bribery policy in the required format was among the mandatory requirements of the Tender. Thus, failure to comply with this requirement justified the disqualification of a tenderer.

The Respondent stated further that, it is undisputed that the Appellant quoted a higher price compared to that of the proposed successful tenderer. However, quoting the highest price at the time of submission of the tenders does not necessarily justify the award of the Tender. It is the requirement of the law that award is to be made on the basis of compliance with the criteria set in the Tender Document.

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In relation to reliefs, the Respondent prayed for an order that the reason for disqualification of the Appellant be upheld and the Appeal be dismissed in its entirety. The Respondent also prayed for the costs of the Appeal.

When the matter was called on for hearing the following issues were framed, namely:-

**1.0 Whether the disqualification of the Appellant's tender was justified; and**

**2.0 What reliefs, if any, are the parties entitled to?**

During the hearing the legal officer of the Appellant Mr. Lusajo Mwakasege submitted first and in the course of his submissions insisted that the Appellant attached to its tender the Form of Integrity in the required format as provided for in the Tender Document. In order to establish the Appellant's position the Appeals Authority displayed the Appellant's tender on TANePS in the presence of the parties and was observed that the Appellant only attached its company's anti-bribery policy/code of conduct. No Form of Integrity as per memorandum format 1 or 2 was attached as required by the Tender Document.

In the view of the absence of the Forms of Integrity, the Appellant conceded not to have complied with the requirement of the Tender Document. The Appellant stated that the Respondent's decision to disqualify it from the Tender process was fair and justified.

In view of this development, the learned counsel for the Respondent, Mr. Petro Mselewa submitted that, since the Appellant has conceded

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that the reason given for its disqualification was justified, the Appellant should pay the costs of this Appeal.

Taking cognizance of the Appellant's admission that its disqualification in this Tender was justified, the Appeals Authority hereby dismiss the Appeal for want of merit. We make no order as to costs.

It is so ordered.

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

The Right of Judicial Review as per Section 101 of the Act is explained to the parties.

This decision is delivered in the presence of the parties this 13<sup>th</sup> day of October 2022.

**HON. JUSTICE (RTD) SAUDA MJASIRI**



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. MS. NDEONIKA MWAIKAMBO**.....

**2. DR. WILLIAM KAZUNGU**.....