

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 12 OF 2024 - 2025

BETWEEN

M/S DOLPHIN PROFESSIONAL SERVICES LTD.....APPELLANT

AND

NATIONAL HEALTH INSURANCE FUND.....RESPONDENT

RULING

CORAM

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| 1. Hon. Justice (Rtd) Sauda Mjasiri | - Chairperson |
| 2. Adv. Rosan Mbwambo | - Member |
| 3. Ms. Ndeonika Mwaikambo | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|-------------------------|------------------------------|
| 1. Ms. Florida Mapunda | - Deputy Executive Secretary |
| 2. Ms. Agnes Sayi | - Senior Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPELLANT

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| 1. Mr. Stewati Shola | - Accounts Manager |
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FOR THE RESPONDENT

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| 1. Mr. Ayoub Sanga | - State Attorney - Office of |
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| | Solicitor General (OSG) |
| 2. Mr. Boaz Msoffe | - State Attorney - OSG |
| 3. Mr. Matamus Fungo | - Legal Service Manager |
| 4. Mr. Deodatus Ngoli | - Senior Legal Officer |
| 5. Ms. Leonia Masmin | - Procurement Unit Manager |
| 6. Mr. Charles Misheto | - Principal Procurement Officer |
| 7. Mr. Ramadhani Chakindo | - Principal Information and Communication Technology Officer |

This Appeal was lodged by **M/S Dolphin Professional Services Ltd** (hereinafter referred to as "**the Appellant**") against **National Health Insurance Fund** commonly known by its acronym as "**NHIF**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR187/2023/2024/G/584 for Supply, Installation and Commissioning of Enterprise Storage System for DR Site (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: -

This 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**"). The Act was repealed and replaced by Act No. 10 of 2023, effective from 17th June 2024, while the Regulations




were repealed and replaced by GN. No. 518 of 2024, effective from 1st July 2024.

On 20th December 2023, the Respondent through the National e-Procurement System of Tanzania (NeST) invited eligible tenderers to participate in the Tender. The deadline for submission of tenders was initially set on 3rd January 2024. However, it was extended to 10th January 2024. On the deadline, the Respondent received three tenders including that of the Appellant.

The received tenders were subjected to evaluation. After completion of the evaluation process, the Evaluation Committee recommended award of the Tender to the Appellant. The recommended contract price was Tanzania Shillings One Billion Sixty-Nine Million Four Hundred Eleven Thousand Nine Hundred Ninety-Five and Ninety Cents only (TZS 1,069,411,995.90) VAT inclusive.

The Tender Board approved award of the Tender as recommended by the Evaluation Committee at its meeting held on 30th May 2024, subject to successful negotiations. Negotiations with the Appellant were conducted on 2nd July 2024, whereby parties agreed on four items out of six which were deliberated. There was no consensus reached on the remaining two items. On 2nd August 2024, the Tender Board deliberated on the negotiation report. It rejected the report and ordered the second lowest evaluated tenderer M/S Computer Center Tanzania Ltd to be invited for negotiations.


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Negotiations with M/S Computer Center Tanzania Ltd were successfully conducted on 16th August 2024. On 30th August 2024, the Tender Board approved the negotiation report and award of the Tender to M/S Computer Center Tanzania Ltd. The approved contract price was Tanzania Shillings One Billion Three Hundred Eighty Five Million Six Hundred Sixty-One Thousand Eight Hundred Twenty-Four and Forty Cents only (TZS 1,385,661,824.40) VAT inclusive.

On 10th September 2024, the Respondent issued the Notice of Intention to award the Tender. The Notice informed the Appellant that the Respondent intended to award the Tender to M/S Computer Center Tanzania Ltd. In addition, the Notice stated that the Appellant's tender was not considered for award since the parties failed to reach a consensus on the two criteria. Thus, negotiations were unsuccessful.

Dissatisfied with the reason given for its disqualification, on 13th September 2024, the Appellant applied for administrative review to the Respondent. On 19th September 2024, the Respondent issued its decision which dismissed the Appellant's application for administrative review. On 24th September 2024, the Appellant re-applied for administrative review to the Respondent on the same subject matter. On 3rd October 2024, the Respondent issued its decision which dismissed the Appellant's second application for administrative review.

Aggrieved further, on 10th October 2024, the Appellant lodged this Appeal to the Appeals Authority. In the lodged Appeal, the Appellant challenged the procedural irregularity on its disqualification from the Tender process.



The Appeals Authority notified the Respondent about the existence of the Appeal and required it to submit a statement of reply thereof. When responding to the grounds of Appeal, the Respondent raised a Preliminary Objection on a point of law to wit: -

"The Appeal is hopelessly time barred by law for being filed out of prescribed time of lodging an appeal before the Authority as provided under Section 97(2)(b) of the Public Procurement Act [CAP 410 R.E 2022]."

When the matter was called on for hearing, Mr. Stewati Shola, Accounts Manager from the Appellant's office, informed the Appeals Authority that the Appellant's Managing Director was to appear for the scheduled hearing. However, he encountered some challenges on his way. Thus, he was unable to appear. Mr. Shola stated that, he has been directed by the Appellant's Managing Director to submit a letter conceding to the Preliminary Objection raised by the Respondent. The letter stated that in view of the Preliminary Objection raised by the Respondent, the Appellant concedes that the Appeal was filed beyond the stipulated time limit under the law. Thus, the Appeal is not properly before the Appeals Authority.

Mr. Ayoub Sanga, learned State Attorney from the Office of the Solicitor General who represented the Respondent in this Appeal, did not object to the Appellant's concession that the Appeal was filed out of time. The learned State Attorney did not press for costs.

In view of the Appellant's concession to the Preliminary Objection that the Appeal is time barred for being filed out of time prescribed under the law,

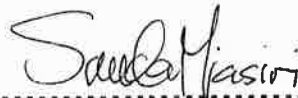


the Appeals Authority hereby upholds the same and dismiss the Appeal for being filed in contravention of Section 97(2)(b) of the Act. We make no order as to costs.

It is so ordered.

This Ruling is delivered this 28th day of October 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI



CHAIRPERSON

MEMBERS: -

1. ADV. ROSAN MBWAMBO.....

2. MS. NDEONIKA MWAIKAMBO.....