

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 16 OF 2024-2025

BETWEEN

M/S GRAIDO GLOBAL RELIEF, AID AND

DEVELOPMENT COMPANY.....APPELLANT

AND

TANZANIA AGRICULTURAL RESERACH

INSTITUTE.....RESPONDENT

DECISION

CORAM

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| 1. Adv. Rosan Mbwanbo | - Ag. Chairperson |
| 2. Eng. Stephen Makigo | - Member |
| 3. Mr. Rhoben Nkori | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

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

FOR THE APPELLANT

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| 1. Mr. Jason Ardon | - East Africa Representative |
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FOR THE RESPONDENT

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| 1. Mr. Yusuph Keu | - Procurement Manager |
| 2. Ms. Lilian Kimaro | - Legal Officer |
| 3. Mr. Waziri Bori | - Procurement Specialist |

This Appeal has been preferred by **M/S Graido Global Relief, Aid and Development Company** (hereinafter referred to as "**the Appellant**") against the Tanzania Agricultural Research Institute, commonly known by its acronym as "**TARI**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. IE 054/2023/2024/TAISP/G/02 for

and intended to apply part of the fund to cover eligible payment under the

Development Bank's Procurement Method and Procedures for Procurement of Goods and Works (hereinafter referred to as "**AfDB Procurement Method and Procedures**").

On 19th April 2024, the Respondent through the Daily News newspaper invited eligible tenderers to participate in the Tender. Deadline for submission of tenders was set on 3rd June 2024. On the deadline, the Respondent received six tenders, including that of the Appellant.

The received tenders were submitted to the AfDB for evaluation.

After the evaluation, the Respondent informed the Appellant that the objection had been granted by AfDB, hence it should proceed with the process of signing the contract.

The Respondent through a letter dated 26th September 2024, issued a notice of unsuccessful bid to the Appellant. The notice stated that the

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Respondent had awarded the contract for Lot 1 and 2 to M/S Peritus Exim Private Ltd and Lot 4 to M/S Jemo Holdings Co. Ltd. In addition, the notice informed the Appellant that its tender was disqualified for having offered compound biological trinocular digital microscope with camera and

when the matter was called on for hearing before framing up of the issues, the Appeals Authority asked the parties to address it on the point of whether it has jurisdiction to determine this Appeal.

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Addressing on this point Mr. Jason Ardon, the Appellant's representative stated that, the Respondent is a public institution, hence when conducting its procurement, it has to adhere to the requirements of the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to as "**the Act**") which was repealed and replaced by Act No. 10 of 2023, effective from 17th June 2024. He added that, all the Respondent's procurement despite the source of fund is to adhere to the requirements of the Act.

Mr. Jason stated further that it is undisputed that the Tender was conducted under the AfDB Procurement Method and Procedures. However, according to the Guidance Note issued by the African Development Bank on Handling Project's Procurement Related Complaints, issued on October 2022 (hereinafter referred to as "**Guidance Note**") , the Appeals Authority has jurisdiction to determine this Appeal. He elaborated that Section 6.2.3 of the Guidance Note states clearly that procurement dispute arising out of

Mr. Yusuph Keu, Procurement Manager made the Respondent's submission on this point by stating that in this Tender both the Act and the AfDB Procurement Method and Procedures were applicable. He stated that since



conducted under ARDB Procurement Method and Procedures are to be resolved in accordance with borrower's procurement dispute resolution mechanism. In view of the above quoted provision, the Appeals Authority has jurisdiction to determine this Appeal.

Given the above finding, the Appeals Authority proceeds with the determination of the Appeal on merits and the following issues were framed: -

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

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

Having framed the issues, the Appeals Authority required the parties to address it on each of the framed issues.

SUBMISSIONS BY THE APPELLANT

The Appellant's submissions were made by Mr. Jason Ardon. He started by giving the background of this Appeal. He stated that on 26th September 2024, the Appellant received the Notice of Unsuccessful bid from the

Mr. Jason submitted that the Respondent erred in law for disqualifying the Appellant's tender for failure to comply with Item 11 of the Technical Specifications. He stated that Item 11 required tenderers to submit compound biological trinocular digital Microscope with cameras and

software. The required model for Item 11 was LB-1270 Optical System-Infinite-Optical System. He submitted that in complying with Item 11, the Appellant offered to supply compound biological trinocular digital microscope with Model- A12.2601 – CT, A59.3518 instead of Model LB-1270 that was required in the Tender Document.

Mr. Jason submitted further that the specifications offered by the Appellant complied with the requirements of Item 11 of the technical specifications. He expounded that the Appellant offered a different model from the one that was specified in the Tender Document. In addition, the offered model discharges the same functions as the model specified by the Respondent.

like item 11. The Appellant offered specifications, not the model provided and the Respondent did not raise a finger on them. Picking item 11 alone is

The Appellant complained that the Respondent erred in law for evaluating the tenders by using brand names provided in the Tender Document. Tenderers were not required to offer the same model as provided in the Tender Document, since model numbers are not technical specifications which tenderers were required to comply with.

Mr. Jason submitted that the Respondent's act of considering model numbers during evaluation had contravened Item 7 of the Standard Tendering Document for Procurement of General Goods under National and International Competitive Tendering issued by the Public Procurement Regulatory Authority (PPRA) in February 2022 (hereinafter referred to as "**PPRA Standard Tendering Document**"). This clause strictly prohibits procuring entities from issuing technical specifications that make reference to brand names and catalogue numbers. According to these items reference to brand names in the tender document should be avoided as far as possible. It is provided that even where it is unavoidable it should be followed by the words "*or substantially equivalent*" or "*at least equivalent*". He stated further that if the Respondent was in need of a specific model, it should have procured the same through single source and not open competitive tender.

Mr. Jason concluded his submissions by stating that the Respondent erred

model number which was not supposed to be part of the technical specifications. During evaluation of tenders the Respondent was required to consider the offered technical specifications and not model number.

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Thus, the Respondent's act of considering model number had contravened the principle of fairness and minimized competition. The Appellant also submitted that its tender has a price difference of TZS 370 Million from that of the proposed successful tenderer. It therefore, offered a tender with value for money.

Based on the above submissions, Mr. Jacon prayed for the following

in the Tender, thus it floated a competitive tender with the required technical specifications. He stated that among the specified specifications included model numbers which aimed at obtaining the required accuracy

for the items that were to be procured. Tenderers were required to comply with the technical specifications as issued and not otherwise.

Mr. Keu stated that had the Appellant found that some of the specifications were not clear, it ought to have sought for clarifications from the Respondent in compliance with the requirements of the Tender Document. However, the Appellant did not do so. It opted to participate in the Tender

offered model also lacked camera, software (5.0MP), LCD and infinity optical system. Thus, the Appellant's tender was disqualified for being non-responsive to the technical requirements, Mr. Keu contended.

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Mr. Keu submitted that as a training institution the Respondent required model LB- 1270 as the same produces the highest degree of accuracy and the best outcome from its functionality. In view of the Respondent's needs

specifications. When preparing its tender, the Appellant believed that the model numbers were for providing guidance to tenderers on the required technical specifications. Surprisingly, when evaluating the tenders the

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Respondent considered model numbers and disqualified the Appellant's tender. The Appellant stated that the Respondent's act of disqualifying its

camera and software. Item 11 reads as follows.

"• (5.0 MP), LCD AND INFINITE OPTICAL SYSTEM-

• **Model - LB - 1270**; Optical System - Infinite Optical System;
viewing Head - Seidentopf Trinocular Viewing Head, Inclined at 30°,

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360° Rotatable, Interpupillary 48-75mm, Light Distribution: 20:80 (eyepiece: trinocular tube).

•"

(Emphasis Added)

The Appeals Authority reviewed the Appellant's tender submitted to the Respondent and observed that in complying with Item 11 of the technical specifications, the Appellant offered to supply "(5.0MP) LCD AND INFINITE OPTICAL SYSTEM, Model A12.2601- CT, A59.3518 Optical System - Infinite Optical System; viewing Head - Seidentopf Trinocular Viewing Head, Inclined at 30°, 360° Rotatable, Interpupillary 48-75mm, Light Distribution: 20:80 (eyepiece: trinocular tube)."

Before determining whether or not the Appellant's tender complied with the technical specifications as provided in the Technical Specifications, the

always follow such references".

This Item prohibits procuring entities from specifying brand names and catalogue numbers when issuing technical specifications.

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manufacturer. The provision also allows if branding cannot be avoided, the words "*or substantially equivalent*" should follow immediately after the specifications with brand names or catalogue numbers.

The Appeals Authority reviewed Section VI -Technical Specifications as provided in the Tender Document. It observed that under Item 11 the Respondent had specified technical specifications which included model- LB 1270. There were no words "*or substantially equivalent*" which would mean that tenderers were required to submit equipment with the same model number or with equivalent specifications.

In view of this observation, the Appeals Authority finds the Respondent's act of specifying model number and without allowing tenderers to submit equivalent specifications to have not only contravened Items 6 and 7 of the

Under the circumstances the Appeals Authority finds that the Tender

Standard Tendering Document allow reference to brand name where it is unavoidable. However, should a tender document include a reference to brand name such item description should always be followed by words "*or substantially equivalent*". It is apparent that the model number specified under Item 11 of Section VI – Technical Specifications has not been followed by the words "*or substantially equivalent*".

In view of this observation the Appeals Authority is of the firm view that the Tender Document under Item 11 of Section VI – Technical Specifications for Lot 4 contravened the law. Thus, it goes without saying that the evaluation which was conducted on the basis of that requirement was not proper as well.

3.0 What reliefs, if any, are the parties entitled to?

Taking cognizance of the findings made hereinabove, the Appeals Authority hereby nullifies the Tender process in respect to Lot 4. The Appeal is allowed to that extent. We make no order as to costs.

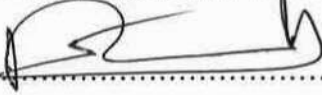
It is so ordered.

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 29th day of November 2024.

ADVOCATE ROSAN MBWAMBO



Ag. CHAIRPERSON

MEMBERS: -

1. ENG. STEPHEN MAKIGO.....

2. MR. RHOBEN NKORI.....