

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 02 OF 2024-2025

BETWEEN

M/S SEC MORE INVESTMENT LTD.....APPELLANT

AND

THE UNIVERSITY OF DODOMA.....RESPONDENT

DECISION

CORAM

- | | |
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| 1. Hon. Justice (rtd) Sauda Mjasiri | - Chairperson |
| 2. Adv. Rosan Mbwambo | - Member |
| 3. Mr. Rhoben Nkori | - 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. Simon Emmanuel | - Managing Director |
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FOR THE RESPONDENT

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| 1. Mr. Boaz Msoffe | - State Attorney - Office of Solicitor General (OSG) |
| 2. Dr. Jebby Gonza | - Ag. Secretary to the Council and Corporate Council |
| 3. Mr. Kelvin Mwambugi | - Senior Procurement Officer |
| 4. Ms. Gwantwa Mwangama | - Procurement Officer |
| 5. Mr. Frank Ndulilo | - Ag. Head Procurement Management Unit (Ag. HPMU) |
| 6. Ms. Lali Shekule | - Procurement Officer |

The Appeal was lodged by **M/S Sec More Investment Ltd** (hereinafter referred to as "**the Appellant**") against the **University of Dodoma** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR63/2023/2024/G/08 for Procurement of Hospital Supplies (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: -

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 30th April 2024, the Respondent invited tenderers through National electronic Procurement System of Tanzania (NeST) to participate in the Tender. The deadline for submission of tenders was set on 14th May 2024. On the deadline, eight tenders were received 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 M/S Nebula Health Care Limited. The recommended contract price was Tanzania Shillings One Hundred Forty Nine Million Four Hundred Ninety Thousand only (TZS 149,490,000.00) VAT exclusive for a delivery period of 30 days.

The Tender Board approved award of the Tender as recommended by the Evaluation Committee on 22nd May 2024. On 5th June 2024, the Respondent issued the Notice of Intention to award the Tender through NeST. The notice informed the Appellant that the Respondent intends to award the Tender to M/S Nebula Health Care Limited. The awarded contract price was TZS 149,490,000.00. Furthermore, the Notice stated that the Appellant's tender was disqualified for attaching contracts that were not similar to hospital supplies.

Dissatisfied with the reason for its disqualification, the Appellant applied for administrative review to the Respondent through a letter dated 12th June 2024. The Appellant contended that the letter was submitted to the Respondent on 14th June 2024 and no response was received from the



Respondent. Aggrieved further, on 5th July 2024, the Appellant filed this Appeal to the Appeals Authority.

Upon receipt of the Appeal, the Appeals Authority notified the Respondent about the existence of the Appeal and required it to submit a Statement of Reply. In his Statement of Reply the Respondent raised a Preliminary Objection (PO) on points of law to wit: -

1. *This matter is untenable in law as this honourable Appeals Authority has no jurisdiction to entertain the matter.*
2. *The Appeal is vexatious, frivolous and untenable in law for being filed beyond the time for lodging an Appeal as stipulated under Section 97(2) of the Public Procurement Act, Cap 410 R.E. of 2022.*

When the matter was called on for hearing and at the time of framing up the issues, the Respondent prayed to abandon the first point of PO and to amend the second point to read that "*the Appeal is not properly before the Appeals Authority as it contravened the requirements of Sections 96 and 97 of the Act*". In view of the raised PO and the merit of the Appeal, the following issues were framed, namely: -

- 1.0 Whether the Appeal is properly before the Appeals Authority;**
- 2.0 Whether the disqualification of the Appellant's tender was justified; and**



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

SUBMISSIONS BY THE RESPONDENT ON THE PO

The Respondent's submissions on the first issue were made by Mr. Boaz Msoffe, learned State Attorney from the Office of the Solicitor General. He commenced by stating that on 5th June 2024, the Respondent issued the Notice of Intention to Award the Tender through NeST. The Notice stated the reason for the Appellant's disqualification from the Tender process. Being dissatisfied with the reason for its disqualification, the Appellant should have lodged an application for administrative review to the Respondent within seven working days. Counting from 5th June 2024 when the Notice of Intention to award was issued, the seven working days lapsed on 14th June 2024. The Appellant applied for administrative review to the Respondent through a letter dated 12th June 2024 that was received by the Respondent on 18th June 2024. The Respondent stamped the received application for administrative review with an official stamp which indicated the date of receipt.

The learned State Attorney submitted that Section 96(4) of the Act read together with Regulation 105 of the Regulations require an application for administrative review to be filed within seven working days of becoming aware of the circumstances giving rise to a complaint. The learned State Attorney submitted that the Appellant filed its application for administrative review on 18th June 2024. Since the Notice of Intention to award was issued on 5th June 2024, the seven working days for filing an application for administrative review started to run from 6th June 2024. The learned State



Attorney stated that after counting the seven working days for filing an application for administrative review from the said date, the Respondent found the Appellant's application to have been filed on the 8th day, beyond the time limit specified under the law.

The learned State Attorney submitted that since the Appellant's application for administrative review was filed beyond the time stipulated under the law, the Respondent was not bound to entertain the same. Consequently, this Appeal contravened the requirements of Section 97(2)(a) of the Act which requires an Appeal before this Appeals Authority to be based on the accounting officer's decision. In the absence of the accounting officer's decision, this Appeal does not have a leg to stand on, the learned State Attorney contended.

In support of his submissions, the learned State Attorney cited **PPAA Appeal Case No. 5 of 2023-24 between M/S Simba Logistic Equipment Supply Ltd versus Tanzania-Zambia Railway Authority.** According to the learned State Attorney, in the referred case the Appeals Authority dismissed the Appeal for being improperly before it. In addition, he stated that the Appeals Authority gave a proper interpretation of Sections 96(4) and 97(2) of the Act on filing of an application for administrative review and an appeal before it. Therefore, the learned State Attorney urged the Appeals Authority to apply the said position on the cited case in this Appeal. Moreover, he contended that the Appeals Authority is required to follow its unbroken chain of precedent as justice demands.

The learned State Attorney concluded his submissions on this issue by stating that in view of the fact that the Appellant contravened the requirements of Section 96(1) and (4) of the Act in submitting its application for administrative review out of time, it follows that this Appeal contravened Section 97(1) and (2) of the Act. Therefore, the learned State Attorney prayed for dismissal of the Appeal.

REPLY BY THE APPELLANT ON THE PO

The Appellant's submissions on the first issue were made by Mr. Simon Emmanuel, the Managing Director. He commenced by stating that the Notice of Intention to award the Tender was communicated to tenderers through NeST on 5th June 2024. The Notice was sent to tenderers at 19:00 hours which was beyond working hours. Mr. Emmanuel stated that the Appellant became aware of the Notice on 6th June 2024. Upon being dissatisfied with a reason for its disqualification as contained in the Notice, on 14th June 2024 the Appellant through a letter dated 12th June 2024 applied for administrative review to the Respondent. He stated that the Appellant's application was submitted at the Respondent's registry office and was received by one Sunday Mwikola.

Mr. Emmanuel expounded that its copy of the application for administrative review was not stamped by the one who received it as it is not the Respondent's practice to do so. Mr. Emmanuel stated that the Respondent's practice is to stamp the letters that remain in its custody and to sign copies of the letters that are left with clients.



Mr. Emmanuel submitted further that when filing this Appeal the Appellant did not attach to its Statement of Appeal, a copy of the application for administrative review that was received and signed by the Respondent. He attached a copy which did not indicate that the application for administrative review was received by the Respondent. Mr. Emmanuel stated that by the time he filed this Appeal, a copy of the application for administrative review received by the Respondent was in the courier's office. He submitted that after being served with the Statement of Reply from the Respondent and realizing that there is a dispute as to when the application for administrative review was filed, he collected the copy from the courier which proves the date of service to be 14th June 2024.

Mr. Emmanuel submitted that the application for administrative review was filed within time in compliance with Section 96(1) and (4) of the Act. However, the Respondent did not issue its decision within the time limit stipulated under the Act. Thus, on 5th July 2024, the Appellant filed this Appeal to the Appeals Authority in compliance with Section 97(1) and (2)(a) of the Act. Therefore, the Appeal is properly before the Appeals Authority. In view of the above made submissions, the Appellant prayed that the PO raised by the Respondent be overruled and the Appeal be heard on merit.



ANALYSIS BY THE APPEALS AUTHORITY ON THE PO

1.0 Whether the Appeal is properly before the Appeals Authority

In resolving this issue, the Appeals Authority reviewed Sections 96(1) & (4) and 97 (1) & (2) of the Act and Regulation 105(1) of the Regulations which provide guidance on procedures to be followed in submission of the application for administrative review to the accounting officer and Appeal to the Appeals Authority. The provisions read as follows: -

"96(1) Any complaints or dispute between procuring entities and tenderers which arise in respect of procurement proceedings, disposal of public assets by tender and awards of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reasons for his decision.

(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within seven working days from the date the tenderer submitting the complaint or dispute or when that tenderer should have become aware of those circumstances, whichever is earlier.

97(1) A tenderer who is aggrieved by the decision of the accounting officer may refer the matter to the Appeals Authority for review and administrative decision.

(2) Where-

(a) the accounting officer does not make a decision within the period specified under this Act; or



*(b) the tenderer is not satisfied with the decision of the accounting officer,
the tenderer may make a complaint to the Appeals Authority within seven working days from the date of communication of the decision by the accounting officer or upon the expiry of the period within which the accounting officer ought to have made a decision.*

105(1) Any application for administrative review shall be submitted in writing or electronically to the accounting officer of a procuring entity and a copy shall be served to the Authority within seven working days of the tenderer becoming aware or should have become aware of the circumstances giving rise to the complaint or dispute."

The above quoted provisions indicate clearly that if a tenderer is not satisfied with the procuring entity's decision, it is required to file an application for administrative review to the respective procuring entity within seven working days of becoming aware of the circumstances giving rise to a complaint. The procuring entity is required to issue its decision within seven working days and where it fails to do so, a tenderer is required to file an Appeal to the Appeals Authority within seven working days.

In ascertaining the validity of the contentious arguments by the parties on this issue, the Appeals Authority reviewed the record of Appeal. It observed that the Respondent issued the Notice of Intention to award through NeST on 5th June 2024 at 19:14 hours. Upon receipt of the Notice



and being dissatisfied with its disqualification, the Appellant applied for administrative review to the Respondent through a letter dated 12th June 2024. It was further observed that a copy of the application for administrative review attached to the Appellant's Statement of Appeal did not show when it was delivered to the Respondent.

However, during the hearing the Appellant tabled before the Appeals Authority a copy of an application for administrative review which showed that it was delivered to the Respondent on 14th June 2024. The said letter indicated that it was received by one Sunday Mwikola who signed, wrote his name, dated it and provided his mobile number. The Appellant alleged that this letter was not attached to the Statement of Appeal as when the Appeal was filed it was in the courier's office.

During the hearing Members of the Appeals Authority required the Respondent to clarify if Sunday Mwikola is one of its employees. In response thereof, the Respondent confirmed that Sunday Mwikola is one of its employees at the registry office. However, the Respondent denied the mode used by Sunday Mwikola of signing the Appellant's application for administrative review. The Respondent stated that all letters received by the Respondent are only stamped with the official stamp indicating the date of receipt.

The Appeals Authority observed further from the record of Appeal that the Respondent alleged to have received the Appellant's application for administrative review on 18th June 2024. The Respondent tabled before the Appeals Authority a copy of the Appellant's application for



administrative review which bears a stamp and indicates that the same was received at the Respondent's office on 18th June 2024. The stamp bears the Respondent's name and date of receipt. However, it does not show the name and signature of a person who received the same. During the hearing the Respondent insisted that the received letters in its office are stamped with official stamp which shows the date of receipt. The Respondent denied having a practice of receiving letters by indicating the name of the recipient, his signature, date of receipt and mobile number as it appears on the copy of the Appellant's application for administrative review.

In view of the above facts, the Appeals Authority observed that the parties' arguments are centred on the date of service of the Appellant's application for administrative review to the Respondent. Having considered the two letters which proves service of the Appellant's application for administrative review, the Appeals Authority observes that the Appellant's letter which shows signature, name, date and mobile number of the recipient carries more weight in substantiating the date of service. In addition, the Respondent's act of recognizing the person who received the Appellant's application for administrative review to be one of its employees at the registry office suffices to substantiate that the Appellant's application for administrative review was served at the Respondent's office on 14th June 2024.

The Appeals Authority is of the view that the Respondent's contention that the Appellant's application for administrative review was received on 18th



June 2024 as per the stamp on the said letter lacks any basis as it does not substantiate who received the same. The stamp and date alone does not hold accountable any of the Respondent's employees. In view of this fact, the Appeals Authority finds that the Appellant's application for administrative review to have been received by the Respondent on 14th June 2024.

Having established that the Appellant's application for administrative review was filed on 14th June 2024, the Appeals Authority considered Section 96(4) of the Act which requires an application for administrative review to be filed within seven working days of becoming aware of the circumstances giving rise to a complaint. Since the circumstances giving rise to a complaint arose from the Notice of Intention to award the Tender that was communicated to tenderers through NeST on 5th June 2024, the Appeals Authority considered the seven working days required for filing an application for administrative review as required by the law. It observed that the Appellant was required to file its application for administrative review on or by 14th June 2024.

In view of our finding that the Appellant's application for administrative review was filed on 14th June 2024, the Appeals Authority finds the same to have been filed in accordance with Section 96(4) of the Act. The Appeals Authority observed further that after receipt of the Appellant's application for administrative review, the Respondent was required to issue its decision within seven working days pursuant to Section 96(6) of the Act. The



Respondent was therefore required to issue its decision on or by 26th June 2024. However, the Respondent conceded to have not issued the decision.

Section 97(2)(a) of the Act allows a tenderer to file an appeal to the Appeals Authority within seven working days if the accounting officer fails to issue its decision within the specified time limit in respect to the filed application for administrative review. The proviso to Section 97(2) of the Act allows a tenderer to file an appeal to the Appeals Authority within seven working days. Counting from 26th June 2024, the last date which the Respondent was required to issue its decision, the Appellant was required to file its appeal on or by 5th July 2024. The record of Appeal indicates that the Appellant filed its Appeal on 5th July 2024. Thus, the Appeal was filed in accordance with the requirement of Section 97(2)(a) of the Act.

The Appeals Authority further considered ***PPAA Appeal Case No. 5 of 2023-24 between M/S Simba Logistic Equipment Supply Ltd versus Tanzania-Zambia Railway Authority***, relied upon by the Respondent. It observed that circumstances of the said Appeal are different from this Appeal.

Given the above findings, the Appeals Authority overrules the preliminary objection and proceeds to determine the Appeal on merit.

SUBMISSIONS BY THE APPELLANT ON THE MERIT OF THE APPEAL

The Appellant's submissions on the merit of the Appeal were also made by Mr. Simon Emmanuel. He commenced on the second issue by stating that the Respondent's Notice of Intention to award was vague on the reason for



the Appellant's disqualification. The Notice stated that the Appellant's tender was disqualified as "*the attached contract are not similar to hospital supplies as requested*". Mr. Emmanuel submitted that in this Tender, tenderers were required to comply with four kinds of experience. According to Section IV – Qualification and Evaluation Criteria, these were compliance with general experience, general experience in key activities, specific experience and current commitment. He submitted that the Appellant complied with all requirements as provided in the Tender Document. Thus, the Respondent was required to specify the part relating to experiences that the Appellant did not comply with.

Mr. Emmanuel submitted further that with regard to compliance with specific experience, the Appellant attached Contract No. OT510000PO2300034 for supply of laboratory scientific testing equipment (Tensile testing machine) supplied to Arusha Technical College, Contract No. 3000471525-3 for supply of scientific testing equipment - vibration sensor supplied to Tanzania Electric Supply Company Ltd and Contract No. 021 for supply of laboratory testing equipment like compression testing machine, elcometer supplied to MEDCCO. Mr. Emmanuel stated that all the attached contracts relate to supply of laboratory equipment which is similar to supply of hospital supplies as required in this Tender.

Mr. Emmanuel stated further that scientific testing is used in various areas such as technical colleges, research institutions, production industries, hospitals and independent laboratories. Thus, contracts for supply of scientific testing equipment attached to the Appellant's tender complied with specific experience requirement as provided in the Tender Document.



Mr. Emmanuel submitted that the Appellant had never supplied hospital supplies but the experience attained in supplying laboratory equipment to research institutions suffices as a specific experience for this Tender.

Mr. Emmanuel expounded that the Respondent required tenderers to submit proof of compliance with specific experience in supply of hospital supplies or contracts of a similar nature. He contended that the Appellant's attached contracts demonstrating supplies of a similar nature. However, according to the Appellant, the Respondent failed to differentiate between contracts of a similar nature and those of the same nature. Contracts of the same nature means exactly the same items. Contracts of a similar nature are required to relate to the items to be supplied but should not necessarily be exactly as they are. Mr. Emmanuel contended that the Appellant's attached contracts were of the similar nature to the items to be supplied for the Tender.

Mr. Emmanuel concluded his submissions by stating that the Respondent's finding that the Appellant's attached contracts on specific experience were not for hospital supplies was wrong. To the contrary, the Respondent was required to evaluate tenders on specific experience by assessing contracts of similar nature and not of the same nature. Thus, the Appellant should not have been disqualified from the Tender process, Mr. Emmanuel contended.

Finally, the Appellant prayed for the following orders: -

- i. Stay/suspension of the procurement process;



- ii. Review of the Tender based on the procurement decision issued in the Notice of Intention to award, filed application for administrative review and Respondent's failure to respond to the Appellant's application for administrative review; and
- iii. Any other relief the Appeals Authority may deem fit to grant

REPLY BY THE RESPONDENT ON THE MERIT OF THE APPEAL

The Respondent's submissions on the second issue were made by Mr. Boaz Msoffe. He stated that paragraph 3 item (a) of the Statement of Appeal indicated that the Appellant was aware that it was disqualified from the Tender process for failure to comply with specific experience. Thus, the Appellant's contention that it became aware of the reason for its disqualification after receipt of the Respondent's Statement of Reply is unfounded, the learned State Attorney contended.

The learned State Attorney added that after receipt of the Notice of Intention to award, the Appellant was required to read the same together with the Tender Document in order to understand the reason for its disqualification. To the contrary, the Appellant read the Notice in isolation of the Tender Document, thus it failed to understand the specific requirements of the Tender which led to its disqualification.

The learned State Attorney submitted that Clause 1.1 of the Instructions To Tenderers (ITT) made reference to Section VII which relates to Schedule of Requirement that specified clearly hospital supplies to be supplied for this Tender. He stated further that Section IV – Qualification and Evaluation Criteria specified specific experience requirements that were required for



this Tender. The learned State Attorney submitted that in view of the hospital supplies listed under Schedule of Requirements and specific experience requirement provided under Section IV - Qualification and Evaluation Criteria, it is evident that contracts of similar nature that were to be attached to tenders to substantiate specific experience was required to relate with hospital supplies.

The learned State Attorney submitted that according to specific experience requirements provided under Section IV - Qualification and Evaluation Criteria, the Appellant was required to attach three contracts to prove its specific experience in supply of hospital supplies for the period starting from 1st January 2021 to 31st December 2023. The learned State Attorney stated that in compliance with specific experience requirements, the Appellant attached contracts for supply, installation, testing and commissioning of electric /cable manufacturing equipment signed on 4th October 2020; supply, installation, testing and commissioning of construction and electrical laboratories testing machine/equipment signed on 18th April 2023; supply, installation, testing and commissioning of construction and electrical machineries/equipment signed on 19th April 2022; supply, installation, testing, commissioning of civil universal tensile testing machine (UTM) and its consumables signed on 8th June 2022; a contract for purchase of vibration sensor to Tanzania Electric Supply Company Ltd dated 10th November 2023; and a contract for immersion RTD dual-element to Tanzania Electric Supply Company Ltd dated 10th November 2023.



The learned State Attorney contended that the attached contracts indicated that the Appellant had experience in supplying machines and equipment including laboratory machines. Hence, the Appellant's attached contracts did not substantiate that it had specific experience as required by the Tender Document, the learned State Attorney contended.

The learned State Attorney stated that since the Appellant failed to comply with specific experience requirement its tender was rightly disqualified from the tender process. He added that the Appellant's non-compliance in this regard amounted to material deviation and as per Regulation 204(2) of the Regulations read together with Clause 10.1(c) of the Guidelines for Determination of Major and Minor Deviation of October 2017, issued by the Public Procurement Regulatory Authority (PPRA), its disqualification was justified.

In support of his submissions the learned State Attorney cited ***PPAA Appeal Case No. 15 of 2022-2023 between M/S China Gezhouba Group Company Ltd versus Dar Es Salaam Water Supply and Sanitation Authority (DAWASA)***. In the referred case, this Appeals Authority dismissed the Appeal having established that the Appellant was fairly disqualified for failure to comply with experience requirements provided in the Tender Document. The learned State Attorney invited the Appeals Authority to apply the same principle to the current Appeal as the Appellant failed to comply with the requirements provided in the Tender Document.

In response to the Appellant's prayer, the Respondent stated that the procurement process was suspended pending determination of this Appeal pursuant to Section 100(4) of the Act.

Finally, the Respondent prayed for the following orders: -

- i. The Appeal lacks merit and should be dismissed; and
- ii. Costs of this Appeal be borne by the Appellant.

ANALYSIS BY THE APPEALS AUTHORITY ON THE MERIT OF THE APPEAL

2.0 Whether the disqualification of the Appellant's tender was justified

In resolving this issue, the Appeals Authority reviewed the record of Appeal and observed that the Appellant was disqualified at the technical evaluation stage for failure to comply with specific experience requirements. In ascertaining if the Appellant's disqualification is justified, the Appeals Authority reviewed the Tender Document. It discerned that Section IV – Qualification and Evaluation Criteria provides guidance on commercial, technical and financial evaluation of tenders. It was further observed that specific experience requirements were provided under technical evaluation in Section IV - Qualification and Evaluation Criteria. To comply with specific experience requirements, tenderers were required to submit three contracts for supply of hospital supplies or contracts of similar nature from 1st January 2021 to 31st December 2023. In addition, each contract was required to have a value of TZS 250,000,000.00. The Appeals Authority noted further that the description of hospital supplies for this Tender were



provided under Section VII – Schedule of Requirements on page 52 of the Tender Document. The description of the hospital supplies was as follows: -

GFS Code: 22004105 – Hospital Supplies

S/N	Description	Unit of Measure	Quantity
1.	Full Automatic Hematology Analyzer XP-300	1PC	1
2.	Full Automatic Hematology Analyzer 5-Parts XN.330 (SYSMEX)	1PC	3
3.	Diaspect Haemoglobin Machine	1PC	2
4.	Water Bath	1PC	1
5.	BD Bactec FX Blood Culture System	1PC	1
6.	Blood Sugar Machine (Glucoplus)	1PC	8

In ascertaining if the Appellant complied with specific experience requirements, the Appeals Authority reviewed the Appellant's tender submitted in NeST. It observed that in complying with the specific experience requirements, the Appellant attached six contracts namely: -

- Contract No. 3000472087-3 for Immersion RTD Dualement entered with Tanzania Electric Supply Company Ltd;
- Contract No. SC051020-01 for supply, installation, testing and commissioning of electric/cable manufacturing equipment entered with Europe Inc. Industries Ltd;



- Contract No. 021 for supply, installation, testing and commissioning of construction and electrical laboratories testing machine/equipment entered with MEDS Contracting Co. Ltd;
- Contract No. 3000471525-3 for purchase of vibration sensor entered with Tanzania Electric Supply Company Ltd;
- Contract No. 011 for supply, installation, testing and commissioning of construction and electrical machineries/ equipment entered with MEDS Contracting Co. Ltd; and
- Contract No. OT510000P02300034 for supply, installation, testing, commissioning of civil universal tensile testing machine (UTM) and its consumables entered with Arusha Technical College.

During the hearing of this Appeal, the Appellant argued that the attached contracts were similar to the Tender as they relate to supply of laboratory equipments. Having considered the list of hospital supplies under Section VII – Schedule of Requirements and specific experience requirements provided under Technical Evaluation, Section IV – Qualification and Evaluation Criteria, the Appeals Authority finds that the Appellant's attached contracts were not for supply of hospital supplies or contracts of a similar nature.

In view of the above, the Appeals Authority finds the Respondent's act of disqualifying the Appellant's tender to be proper and in accordance with Regulation 206(2) of the Regulations which reads as follows: -

"206(2) *Where a tender is not responsive to the tender document, it shall be rejected by the procuring entity,*



and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation."

(Emphasis Supplied)

The Appeals Authority is of the firm view that ***PPAA Appeal Case No. 15 of 2022-23 between M/S China Gezhouba Group Company Ltd versus Dar Es Salaam Water Supply and Sanitation Authority (DAWASA)***, relied upon by the Respondent is applicable under the circumstances of this Appeal.

Given the above findings, the Appeals Authority concludes the second issue in the affirmative that the disqualification of the Appellant's tender was justified.

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

Taking cognizance of the findings hereinabove, that the disqualification of the Appellant's tender was justified, the Appeals Authority hereby dismiss the Appeal. The Respondent is ordered to proceed with the Tender in compliance with the law. We make no order as to costs.

It is so ordered.

This Decision is binding on the Parties and may be executed in terms of Section 97 (8) of the Act.

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



The Decision is delivered in the presence of the Respondent and in absence of the Appellant though duly notified this 9th day of August 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI



CHAIRPERSON

MEMBERS: -

1. ADV. ROSAN MBWAMBO



2. MR. RHOBEN NKORI

