

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 22 OF 2024 - 2025

BETWEEN

M/S WELINK CONTRACTING LIMITED.....APPELLANT

AND

**TANZANIA ELECTRIC SUPPLY
COMPANY LIMITED.....RESPONDENT**

DECISION

CORAM

- | | |
|-------------------------------------|---------------|
| 1. Hon. Justice (Rtd) Sauda Mjasiri | - Chairperson |
| 2. Eng. Stephen Makigo | - Member |
| 3. Dr. William Kazungu | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

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

FOR THE APPELLANT

- | | |
|-------------------------|-----------------------|
| 1. Ms. Desderia Mapunda | - Managing Director |
| 2. Mr. Edward Eressa | - Director of Finance |
| 3. Mr. Allen Godian | - Contract Manager |
| 4. Ms. Jackline Majora | - Operational Manager |



FOR THE RESPONDENT

- | | |
|---------------------------|---------------------------------|
| 1. Mr. Mkumbo Elias | - Senior Legal Officer |
| 2. Ms. Elizabeth Kimako | - Senior Legal Officer |
| 3. Mr. Mwiga Kasalama | - Procurement Officer |
| 4. Mr. Deogratias Thomas | - Principal Procurement Officer |
| 5. Ms. Beatrice Sosthenes | - Procurement Officer |

This Appeal was lodged by **M/S Welink Contracting Limited** (hereinafter referred to as "**the Appellant**") against the **Tanzania Electric Supply Company Limited**, commonly known by its acronym as "**TANESCO**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR212/2024/2025/G/222 for Supply, Installations and Commissioning of Video Wall Display System (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 International Competitive Tendering method as specified in the Public Procurement Act, No.10 of 2023 (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as "**the Regulations**").

On 16th August 2024, the Respondent through National e-Procurement System of Tanzania (**NeST**) invited eligible tenderers to participate in



the Tender. The deadline for submission of tenders was set on 06th September 2024. By the deadline, the Respondent received four 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 M/S Bravado Solution Limited. The recommended contract price was Tanzania Shillings Five Hundred Eighty-Five Million only (TZS 585,000,000.00) VAT Exclusive for a completion period of 180 days.

On 06th November 2024, the Respondent issued a Notice of Intention to award the contract. The Notice stated that the Respondent intended to award the contract to M/S Bravado Solution Limited. In addition, the Notice indicated that the Appellant's tender was not considered for award as it was not the lowest evaluated tenderer in terms of financial evaluation.

Dissatisfied with the reason given for its disqualification, the Appellant applied for an administrative review to the Respondent through a letter dated 12th November 2024. The Respondent through a letter dated 19th November 2024, issued a decision which rejected the Appellant's application for administrative review. Aggrieved further, on 28th November 2024, the Appellant filed this Appeal before the Appeals Authority.

When the matter came up for hearing, the Respondent raised a preliminary objection on a point of law that the Appeal is improperly before the Appeals Authority. In addition, the Respondent stated that it has been filed in contravention of Section 121(1) of the Act. The referred provision requires an appeal to the Appeals Authority to be filed within five working



days from the date a tenderer becomes aware of the procuring entity's decision on its application for administrative review or if the procuring entity fails to issue its decision within the time specified under the law.

The Respondent submitted that the Notice of Intention to award which was issued on 6th November 2024 stated that the Appellant's tender was not considered for award as it was not the lowest evaluated tenderer. Further, the Respondent explained that the Appellant was dissatisfied with the reason that its tender was non-responsive in terms of financial evaluation. Thus, on 13th November 2024, it applied for administrative review to the Respondent. The Respondent was required to issue its decision by 20th November 2024. However, the Respondent's decision was issued on 25th November 2024. The Appellant was required to file its Appeal within five working days after the lapse of time within which the Respondent was required to issue its decision. Therefore, the Appellant was required to file its Appeal by 27th November 2024. To the contrary, the Appellant filed the Appeal on 28th November 2024, a day late. Hence, the Appeal was filed out of time.

In response to the Respondent's contention, the Appellant stated that the Appeal was filed within time on 28th November 2024. The Appellant stated that it could not have filed the Appeal on 27th November 2024 as it was a public holiday for voting purposes. The law requires an appeal to be filed within five working days. Since 27th November 2024 was a public holiday, it could not be included when counting the five working days for filing this Appeal. Thus, this Appeal was filed on 28th November 2024 which was the last day for filing the Appeal. Therefore, the Appeal is properly before the



Appeals Authority as it was filed within the time stipulated under the law. After being made aware that 27th November 2024 was a public holiday, the Respondent withdrew the raised preliminary objection.

Consequently, the following issues were framed on the substantive merits of the Appeal as follows: -

- 1.0 Whether the disqualification of the Appellant's tender was justified; and**
- 2.0 What reliefs, if any, are the parties entitled to?**

SUBMISSIONS BY THE APPELLANT

The Appellant's submissions were made by Mr. Edward Eressa, Director of Finance assisted by Mr. Allen Godian, Contract Manager. The Appellant commenced on the first issue by stating that it was among the tenderers which submitted their tenders. The Appellant stated that on 6th November 2024, it received a Notice of Intention to award the Tender from the Respondent. The Notice stated that the Respondent intended to award the Tender to M/S Bravado Solution Limited. In addition, the Notice indicated that the Appellant's tender was unsuccessful as it was found not to be the lowest evaluated tenderer in terms of financial evaluation.

The Appellant challenges the reason given for its non-responsiveness because the work to be executed is of high end and needs technical qualification rather than the issue of low financial budget. That is to say, the work needs a qualified company which is capable of supplying and installing the video wall display system. The Appellant claimed to be more experienced on such works as it supplied and installed video wall display



systems in various companies including Chem Chem Association (CCA) which is one of its reputable clients. Therefore, the Appellant claimed to be more eligible as it has technical experience to execute quality work which will last longer.

The Appellant submitted that the evaluation process was conducted in a manner that placed undue emphasis on financial cost rather than the technical qualifications and experience which were required for this specialized type of work. The Appellant stated that the Tender Document outlined technical specifications as critical criteria for evaluation. In response to the specified technical specifications, the Appellant demonstrated superior technical capacity and experience in delivering similar projects. The Appellant elaborated that the project in question involves supply and installation of high-end wall display systems, an activity that requires expertise and experience so as to ensure quality and longevity. Thus, the Appellant was to be declared the most suitable contractor for this high-stakes project.

The Appellant stated that the intended project is not merely price-sensitive, where low financial bids could compromise the integrity and reliability of the final installation. The Appellant claimed to have financial muscle and could efficiently execute the project without compromising the quality. The Appellant submitted that the Respondent's act of intending to award the Tender to M/S Bravado Solution Limited solely on the basis of the lowest evaluated tender price, poses several risks such as project delays, substandard quality and cost escalations due to corrective actions. The Appellant contended that it highly doubts the technical qualifications of the



proposed successful tenderer, M/S Bravado Solution Limited. Therefore, it urged the Appeals Authority to review the evaluation report and ascertain if the proposed successful tenderer has complied with technical specifications provided in the Tender Document.

The Appellant submitted further that the Respondent is a public utility company. Thus, it should prioritize quality and performance over mere cost considerations. The Appellant stated that the Respondent's act of intending to award the contract to a less qualified contractor could result in additional costs for maintenance, replacements or repairs in the long term. Thus, the Respondent should have awarded the Tender to the Appellant as it is the most competent company.

Finally, the Appellant prayed for the following reliefs: -

- i) The decision to award the tender basing solely on financial evaluation be reviewed in the light of the specialized technical nature of the project;
- ii) The evaluation process should be reviewed to ensure that the proposed successful tenderer has technical expertise, experience and financial capability to deliver quality work; and
- iii) The Respondent should be ordered to consider the Appellant as the most suitable contractor for this project, given its proven track record and demonstrated capability.

REPLY BY THE RESPONDENT

Reply submissions were made by Mr. Mkumbo Elias and Ms. Elizabeth Kimako, senior legal officers from the Respondent's Office. Ms. Kimako



started by adopting the reply to the Statement of Appeal. She went on to state that the Appellant was one of the tenderers which participated in this Tender. By the deadline for submission of tenders, the Respondent received four tenders from M/S Cobweb Tanzania Limited, M/S Bravado Solution Limited, M/S Birdhouse International (T) Limited and the Appellant. The Respondent stated that the received tenders were subjected to evaluation which was conducted in three stages; commercial, technical and financial evaluation.

During commercial evaluation, the tender submitted by M/S Birdhouse International (T) Limited was found to have not complied with the Tender requirements. Thus, the tender was considered to be non-responsive and not subjected for further evaluation. The remaining three tenders were subjected to technical evaluation. At this stage, M/S Cobweb Tanzania Limited did not comply with technical specifications provided in the Tender Document. Hence, its tender was considered to be non-responsive. The remaining two tenders were subjected to financial evaluation. At this stage tenders were assessed on compliance with financial requirements and thereafter were ranked accordingly. After completion of the financial evaluation process, M/S Bravado Solution Limited emerged as the first ranked tenderer with a quoted price of TZS 585,000,000.00 VAT exclusive while the Appellant was the second ranked with a quoted price of TZS 599,377,416.68 VAT exclusive.

The Respondent submitted that the Evaluation Committee recommended award of the Tender to M/S Bravado Solution Limited. The recommendation for award was approved by the Tender Board on 16th

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October 2024, subject to negotiations. The Respondent added that, negotiations with the proposed successful tenderer were conducted from 28th October 2024 to 1st November 2024. After completion of the negotiation process, the Tender Board approved award of the Tender to M/S Bravado Solution Limited. On 6th November 2024, the Respondent issued the Notice of Intention to award the Tender to M/S Bravado Solution Limited. The Notice also stated that the Appellant's tender was not considered for award as it was non-responsive in terms of financial evaluation. The Appellant was dissatisfied with the reason given for its tender being non-responsive. Hence, it applied for administrative review to the Respondent and subsequently filed this Appeal.

The Respondent submitted that in conducting this Tender it was guided by the Act, Regulations, the Tender Document and criteria set forth in NeST. The Respondent stated that the evaluation exercise was conducted fairly and transparently to all tenderers including the Appellant in NeST. Thus, the Respondent's act of awarding the Tender to M/S Bravado Solution Limited was fair and in compliance with the law.

On the Appellant's argument that the Respondent was required to award the Tender to a tenderer with the most technical qualification, quality and capability of supplying, installing and commissioning of video wall display system, the Respondent stated that the proposed successful tenderer was evaluated in line with the requirements provided in the Tender Document and NeST. During evaluation of the tenders, M/S Bravado Solution Limited was found to be the lowest evaluated tenderer and therefore eligible for award of the Tender. The Respondent elaborated that award of the Tender



was based on the criteria provided in the Tender Document. Thus, a tenderer which was found to be the lowest evaluated was recommended for award. The Respondent expounded that compliance with technical specifications was not the only factor for consideration of award of the Tender. Therefore, the Respondent urged the Appeals Authority to disregard the Appellant's contention that it is the most competent firm for award of the tender due to its technical expertise.

The Respondent stated further that when submitting in chief, the Appellant has failed to substantiate on what basis the proposed successful tenderer did not qualify for award of the Tender. The Respondent stated that the Appellant's submissions in this Appeal were mere allegations which were not proved as required. Section 110(1) of the Evidence Act, Cap 6, R.E 2022, requires whoever desires to get a judgment as to any legal right or liability it must prove the basis of such a right. In this Appeal the Appellant has failed to do so, the Respondent contended.

The Respondent submitted further that during the hearing of this Appeal, the Appellant raised arguments regarding the technical qualifications of the proposed successful tenderer. However, the raised arguments were neither in the Statement of Appeal nor in the application for administrative review. The Respondent urged the Appeals Authority to disregard all the new contentions raised during the hearing.

With regard to the Appellant's argument that it ought to be called for price negotiations, the Respondent submitted that this Tender was guided by the Act and its Regulations. The referred governing laws require a tenderer who has been found to be the lowest evaluated to be invited for



negotiations. In this Tender, the Appellant was not the lowest evaluated tenderer, thus it could not have been invited for negotiations. The law strictly prohibits negotiations with a tenderer which was not found to be the lowest evaluated.

The Respondent concluded its submissions by stating that the Respondent's Tender process was conducted in accordance with the Act and its Regulations. Therefore, the Respondent's decision to award the Tender to M/S Bravado Solution Limited was fair and in accordance with the law.

Finally, the Respondent prayed for the dismissal of the Appeal in its entirety with costs.

ANALYSIS BY THE APPEALS AUTHORITY

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

In resolving this issue, the Appeals Authority reviewed the record of Appeal. It observed that the Appellant was among the four tenderers which participated in the disputed Tender. It was further observed that during evaluation, two tenderers were disqualified at the commercial and technical evaluation stages. The Appellant and the proposed successful tenderer were the only tenderers which qualified for the financial evaluation stage. At the financial evaluation stage, the proposed successful tenderer was ranked the first followed by the Appellant. Their quoted prices were TZS 585,000,000.00 and 599,377,416.68 VAT exclusive, respectively.



The Appeals Authority reviewed the evaluation report and observed that both the Appellant and the proposed successful tenderer complied with the requirements of the Tender at the commercial and technical evaluation stages. Thus, they were subjected to financial evaluation and ranking. Since the evaluation report is clear that the Appellant was the second ranked tenderer, the Appeals Authority finds the Respondent's act of not considering it for award of the Tender as the lowest evaluated in terms of financial evaluation to be proper and in accordance with Section 89(1) of the Act read together with Regulation 210(2) of the Regulations which read as follows: -

89(1)"Kamati ya tathmini itafanya tathmini ya zabuni ambazo hazijakataliwa kwa misingi sawa kwa lengo la kubaini gharama kwa taasisi nunuzi ya kila zabuni kwa namna inayoruhusu ulinganifu kufanyika kati ya zabuni kwa misingi ya gharama zilizofanyiwa tathmini, japo bei ndogo zaidi iliyowasilishwa inaweza isiwe msingi wa kuchaguliwa kwa ajili ya kupewa tuzo ya mkataba.

210(2) Zabuni zitalinganishwa ili kubaini bei ya chini zaidi iliyofanyiwa tathmini kwa ajili ya ununuzi wa bidhaa, kazi za ujenzi au huduma au bei ya juu zaidi iliyofanyiwa tathmini kwa ajili ya ukusanyaji wa mapato;"

(Emphasis supplied)

The above quoted provisions state clearly that award of the tender shall be made to the lowest evaluated tender price in case of goods, works or



services or to the highest evaluated tender price in case of revenue collection.

The Appeals Authority considered the Appellant's contention that it is the most responsive and qualified tenderer technically for award of the Tender due its vast experience and knowledge in supply and installation of video wall display system. Thus, technical qualification should have been the basis for award of the Tender and not the lowest quoted price. In ascertaining the validity of the Appellant's argument in this regard, the Appeals Authority reviewed Regulation 210(1) of the Regulations which reads as follows: -

"210(1) Tathmini ya zabuni itaendana na vigezo na masharti yaliyoanishwa kwenye nyaraka za zabuni na itafanywa kwa kutumia vigezo vilivyoainishwa kwenye nyaraka za zabuni".

(Emphasis supplied)

The above quoted provision requires evaluation of tenders to be consistent with the terms and conditions prescribed in the tender document and such evaluation should be carried out using criteria explicitly stated in the tender document.

After reviewing the record of Appeal, particularly the Tender Document, the Appeals Authority observed that it indicates clearly that tenderers were to be assessed on commercial and technical responsiveness before being considered for price comparison. The Appeals Authority reviewed the evaluation report and observed that the evaluation process was conducted



in accordance with the requirements provided in the Tender Document. In addition, the evaluation report indicates that the Appellant and the proposed successful tenderer were the only tenderers which qualified at the commercial and technical evaluation stages. The two firms were then subjected for price comparison. After price comparison, the proposed successful bidder emerged as the first ranked followed by the Appellant. In view of this observation, the Appeals Authority rejects the contention that the Appellant was to be awarded the tender as the most technically responsive tenderer. The award of the Tender is made to a tenderer which has been found to be the lowest evaluated as per the requirements provided in the Tender Document.

The Appeals Authority considered the Appellant's contention that the Respondent should have invited it for price negotiations before considering its tender non-responsive. The Appeals Authority wishes to enlighten the Appellant that according to Regulation 232(5) of the Regulations, negotiations are conducted with a tenderer who has been determined as the lowest evaluated. Regulation 232(5) of the Regulations read as follows: -

"232(5) Majadiliano yatafanyika kwa mzabuni mwenye zabuni yenye bei ya chini zaidi iliyofanyiwa tathmini kwa bidhaa, huduma au kazi za ujenzi, au mzabuni mwenye zabuni yenye bei ya juu zaidi iliyofanyiwa tathmini ya ukusanyaji wa mapato kwa zabuni za ushindani wa kitaifa na kimataifa."

(Emphasis supplied)



Based on the evaluation report, it is crystal clear that the Appellant was not the lowest evaluated tenderer. Therefore, it could not have been invited for negotiations. In view of the requirements of the law, the Appeals Authority equally rejects the Appellant's contention that it should have been invited for negotiations before its tender was considered non-responsive.

Given the above findings, the Appeals Authority is of the firm view that the Respondent's act of regarding the Appellant's tender as non-responsive in terms of financial evaluation to be proper and in accordance with the law.

The Appeals Authority therefore concludes the first issue in the affirmative that the disqualification of the Appellant's tender was justified.

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

Taking cognizance of the above findings, the Appeals Authority hereby dismiss the Appeal for lack of merit. The Respondent is ordered to proceed with the Tender process in observance of the law. We make no order as to costs.

It is so ordered.

This decision is binding and can be enforced in accordance with Section 121(7) of the Act.

The Right of Judicial Review as per Section 125 of the Act is explained to the parties.



This decision is delivered in the presence of the parties this 24th day of December 2024.

HON. JUSTICE (rtd) SAUDA MJASIRI



.....
CHAIRPERSON

MEMBERS: -

1. ENG. STEPHEN MAKIGO.....



2. DR. WILLIAM KAZUNGU.....