

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 39 OF 2024 - 2025

BETWEEN

M/S KANKWI COMPANY LIMITED APPELLANT

AND

INSTITUTE OF TAX ADMINISTRATION.....RESPONDENT

DECISION

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (Rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu | - Member |
| 3. Dr. Gladness Salema | - 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. Mr. James Kasusura | - Advocate – Kasubagi
Attorneys |
| 2. Mr. Adam Kichawe | - Director |
| 3. Ms. Sarah Mambea | - Managing Director |
| 4. Mr. Salumu Msafiri | - Manager |



FOR THE RESPONDENT

- | | |
|---------------------------|---|
| 1. Ms. Salome Chambai | - Senior Legal Counsel –
TRA |
| 2. Mr. Taragwa Nyang'anyi | - Legal Counsel - TRA |
| 3. Mr. Onesmo France | - Manager of Procurement |
| 4. Ms. Juliana Musomi | - Principal Procurement &
Supplies Officer - ITA |

This Appeal was lodged by **M/S Kankwi Company Ltd** (hereinafter referred to as "**the Appellant**") against the **Institute of Tax Administration** known by its acronym **ITA** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Quotation No. TR134/006/2024/2025/NC/32 for Provision of Catering Services for TRA Staff and ITA Students (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 the National Shopping 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 3rd January 2025, 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 set on 8th



January 2025 and four tenders including the Appellant's were received by the Respondent.

The said tenders were subjected to an evaluation process by the Evaluation Committee which then recommended award of the Tender to M/S Namis Corporate Ltd at a recommended contract price of Tanzania Shillings Two Hundred Forty Thousand and Fifty (TZS 240,050/=) VAT Exclusive.

On 14th February 2025, the Respondent issued a Notice of Intention to award which informed the Appellant that the Respondent intended to award the contract to M/S Namis Corporate Ltd. The awarded contract price was Tanzania Shillings Two Hundred Forty Thousand and Fifty only (240,050.00) VAT Exclusive. Furthermore, the Notice stated that the Appellant's tender was not eligible for award for failure to submit a recommendation letter from the Respondent as it had an ongoing contract with it.

Dissatisfied with its disqualification, on 17th February 2025, the Appellant applied for administrative review to the Respondent. On 21st February 2025, the Respondent informed the Appellant that it was working on its complaint and would issue its decision later on. However, the Respondent did not issue any decision thereof.

The record of Appeal indicates that the Respondent proceeded with its internal process until 24th April 2025 when the second Notice of Intention to award the Tender was issued. The Notice informed the Appellant that the Respondent intended to award the Tender to M/S Namis Corporate Ltd at a contract price of Tanzania Shillings Two Hundred Forty Thousand and



Fifty only (240,050.00) VAT Exclusive. In addition, the Notice stated that the Appellant's tender was not considered for award because it submitted eight invalid certificates of its key personnel.

Dissatisfied with its disqualification, on 30th April 2025, the Appellant applied for administrative review to the Respondent. On 5th May 2025, the Respondent issued its decision which dismissed the Appellant's application for administrative review. Aggrieved further, on 12th May 2025, the Appellant filed this Appeal before the Appeals Authority.

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

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

2.0 To what reliefs, if any, are the parties entitled to?

SUBMISSIONS BY THE APPELLANT

The Appellant's submissions were made by Mr. James Kasusura, learned counsel. He commenced on the first issue by stating that the Appellant was one of the tenderers which participated in the Tender advertised on 3rd January 2025. After completion of internal processes, on 14th February 2025, the Respondent issued the notice of Intention to award. The Notice informed the Appellant that its tender was disqualified for failure to submit a recommendation letter from the Respondent as it had an ongoing contract. The learned counsel stated that such a requirement was not provided in the Tender Document.

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The learned counsel stated that the Evaluation Committee was incompetent and biased against the Appellant as the criterion used to disqualify its tender was not applicable to it. The Appellant did not have a contract with the Respondent but had one with the Tanzania Revenue Authority (TRA). Thus, it was his view that the mentioned criterion was inapplicable to it.

The learned counsel submitted that after receipt of the first Notice of Intention to award, on 17th February 2025, it applied for administrative review to the Respondent. The Appellant believed that it was unfairly disqualified from the Tender process. He contended that the Respondent's reason for the disqualification of the Appellant's tender was based on sub criteria 2 and 3 of Criterion 11 of the Tender Document. The referred criterion requires a tenderer to submit a recommendation letter if it has or had a contract with the Respondent. He expounded further that since the Appellant did not have a contract with the Respondent, it alternatively submitted two recommendation letters from the National Housing Corporation (NHC) and the Tanzania-Zambia Railway Authority (TAZARA) whilst the requirement was submission of only one recommendation letter. He argued that the Appellant exceeded the requirement provided in the Tender Document.

The learned counsel went on to submit that on 21st February 2025, the Appellant received a letter from the Respondent which acknowledged receipt of its application for administrative review. The letter also informed the Appellant that a decision would be issued after consideration of the complaint. On 4th March 2025, the Appellant submitted a reminder letter



to the Respondent. However, the Respondent did not issue a decision as required by section 120(6)(a) and (b) of the Act. The learned counsel added that the Respondent in its Statement of Reply claimed to have issued a decision with respect to the Appellant's application for administrative review. However, a copy of such a decision was neither availed to the Appellant nor served to the Public Procurement Regulatory Authority in compliance with regulation 109(3) of the Regulations.

The learned counsel stated that on 24th April 2025, the Appellant received a second Notice of Intention to award from the Respondent. The Notice stated that the Appellant's tender was disqualified for submitting eight unauthenticated certificates of its key personnel. The Appellant was surprised by the Respondent's issuance of two separate reasons for its disqualification.

The learned counsel submitted that the Respondent's act of issuing the second Notice of Intention to award indicates that it conducted the second evaluation after the Appellant had submitted the first application for administrative review. This position was substantiated by what was contained in the Reply to the Statement of Appeal where the Respondent stated that the evaluation process was carried on from 6th to 7th March 2025. As per the sequence of events, this evaluation was carried after the first Notice of Intention to award was issued. Hence, the Respondent should have indicated that the dates were for the second evaluation.

The learned counsel submitted that the record of Appeal indicates that through an Internal Memo dated 19th February 2025, the Respondent sought guidance from TRA on the reason issued for disqualification of the

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Appellant's tender. The said Memo contained wrong information about the Appellant's disqualification. Through a letter dated 22nd February 2025, TRA informed the Respondent that the disqualification of the Appellant's tender was not justified as it did not have a contract with the Respondent. The contract which existed was between the Appellant and TRA and not the Respondent. Thus, TRA required the Respondent to re-instate the Appellant's tender and conduct a re-evaluation.

The learned counsel stated that after receipt of the TRA's advice which indicated clearly that the Appellant's tender was unfairly disqualified, there was no need to re-evaluate the tenders. Instead, the Appellant should have been awarded the contract as it was proved that it complied with the criteria provided in the Tender Document including those which led to its disqualification. On the contrary, after receipt of the TRA's guidance, the Respondent conducted the re-evaluation process in a biased and unfair manner just to ensure that the Appellant would be denied award of the contract.

The learned counsel submitted that the criterion that was used to disqualify the Appellant's tender was set purposely to be used against the Appellant. He said that this act contravened requirements of regulation 6(1)(b) of the Regulations. The regulation requires a procuring entity to encourage wide participation of tenderers by avoiding discriminatory practices and inserting technical specifications which limit participation of tenderers.

The learned counsel stated further that the Appellant's disqualification was contrary to regulations 211(1), 231(2) and (5) of the Regulations which require criteria for post qualification to be set out in the Tender Document

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and should be limited to performance of the intended contract. As it was proved that the Appellant complied with requirements of the Tender Document by submitting two recommendation letters of its previous executed contracts, it should have been awarded the contract.

The learned counsel submitted that in the Reply to the Statement of Appeal, the Respondent had indicated to have waived the requirement which led to the Appellant's disqualification in the first instance. The learned counsel contended that such a waiver was invalid as the same could not have been issued after it had already been disqualified from the Tender process.

In support of his submissions, the learned counsel cited PPAA Appeal Case No. 131 of 2012 between ***M/S M.A.K Engineering Co. Ltd and Another versus National Social Security Fund*** where it was held that, the Respondent's act of observing the defect in the tender and decide to waive such a criterion for the purpose of qualifying a tenderer to the next stage raises doubt as to the credibility and integrity of the evaluators. The Appeals Authority further held that the evaluators' act of using an alien criterion contravened the law, as the evaluation was required to be conducted in compliance with the criteria set in the Tender Document. The learned counsel related the cited case to the facts of this Appeal and stated that the Respondent's waiver was invalid and irrelevant as the Appellant complied with all the Tender requirements.

The learned counsel submitted that the Respondent had indicated in the Statement of Reply that due diligence conducted on the Appellant confirmed beyond reasonable doubt that eight certificates of key personnel

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were not authentic. He stated that the Respondent erred in law for reaching such a decision without affording the Appellant the right to be heard as required by regulation 225(5) of the Regulations. According to the provision, it was the counsel's argument that the Appellant ought to have been contacted to confirm the qualification of its employees before the Respondent proceeded to disqualify the Appellant's tender.

The learned counsel further cited PPAA Appeal Case No. 9 of 2023-24 between ***M/S Dezo Civil Contractors Company Ltd and Another versus the Public Procurement Regulatory Authority and Another*** wherein the case of ***Omary Yusuph versus Rahma Ahmed Abdulkadr*** (1987) TLR 169 was cited and the Court held that

"... It is now established that when the question whether someone has committed a crime is raised in civil proceedings that allegation need to be established on a higher degree or probability than that which is required in ordinary civil cases..."

The learned counsel also stated that when the question of reasonable doubt is raised, a judge or magistrate is required to reasonably decide on the issue as was stated in the case of ***Michael Mwakalula Njumba and Another versus the Republic***, Consolidated Criminal Appeal No. 376 of 2020 & 276 of 2020, (CA) at Dar es Salaam. In the above case, the Court quoted its finding in the case of ***Ikundila Wigae versus Republic*** [2005] T.L.R 365 where it said: -

"It cannot be doubted that reasons enhance public confidence in the decision-making process. If a judge or magistrate were to decide a matter before him by



tossing a coin, it is quite possible that his decision would be correct, but neither a lawyer nor a layman would regard it as being acceptable."

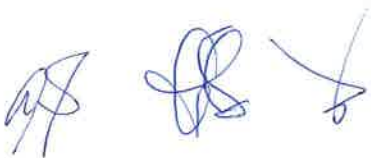
Regarding the invalid eight certificates of its key personnel, the learned counsel submitted that those certificates were certified by the respective Commissioners for Oaths and Notaries Public. Therefore the Appellant was certain that the submitted certificates were valid as it had no reason to doubt the authenticity. It was the counsel's argument that the disqualification was improper as the Appellant ought to have been given the right to be heard on this matter.

Finally, the Appellant prayed for the following reliefs: -

- i. Annul the second disqualification of the Appellant due to procedural irregularity.
- ii. Overturn the first disqualification of the Appellant as it was based on the requirement that was not provided in the Tender Document.
- iii. Reinstate the Appellant as it complied with the requirements of the Tender Document.

REPLY BY THE RESPONDENT

The Respondent's submissions were led by Mr. Tarangwa Nyang'anyi, legal counsel. He commenced his submissions on the first issue by stating that this Appeal has originated from the second Notice of Intention to award issued on 24th April 2025. The said Notice informed the Appellant that its



tender was disqualified for submitting unauthenticated certificates of its eight key personnel.

The counsel submitted that in the first evaluation report the Appellant's tender was disqualified for failure to submit a recommendation letter from the Respondent as it had an ongoing contract contrary to the criterion provided under Item 5 of Section IV – Qualification and Evaluation Criteria. However, after receipt of the Appellant's application for administrative review, the Respondent sought guidance from the TRA aimed at ensuring that the tender process was conducted in accordance with the law. He said that TRA responded by informing the Respondent that the Appellant had a contract with TRA and not the Respondent. Therefore, the reason given for its disqualification was invalid. And that the TRA directed the Respondent to re-instate the Appellant in the Tender process and re-evaluate all the tenders in compliance with the criteria provided in the Tender Document, the Act and Regulations.

The legal counsel stated that the Respondent complied with the guidance given and re-evaluated all the tenders. After completion of the re-evaluation process, the Appellant was found to be the lowest evaluated tenderer and was recommended for award. The Appellant's recommendation of award was submitted to the Tender Board. But after deliberation, the Tender Board directed due diligence to be done on the Appellant in compliance with Section 36(c) of the Act before proceeding to award the Tender.

The legal counsel submitted that due diligence was done to the Appellant in various criteria including submission of certificates for its key personnel.



The Respondent wrote letters to relevant institutions seeking verification of certificates of key personnel submitted by the Appellant. He stated that the contacted institutions replied by confirming that eight certificates out of sixteen were not authentic. The due diligence findings were tabled before the Tender Board which disapproved the award proposed to the Appellant. The Tender Board then approved award of the Tender to the second lowest evaluated tenderer in compliance with sections 55(6), 107(2) and 128(a) of the Act which allow a procuring entity to reject award of a tender due to misrepresentation of facts.

The legal counsel stated that the Appellant was afforded the right to be heard when it was served with the second Notice of Intention to award on 24th April 2025. That it submitted its application for administrative review on 30th April 2025. However, the Appellant did not dispute the reason given for its disqualification as indicated in the second Notice of Intention to award. The Appellant kept on challenging the reason given for its disqualification as contained in the first Notice of Intention to award. Therefore, it was the counsel's argument that the Appellant's claim it was condemned unheard is not proper.

The legal counsel submitted further that it received the Appellant's application for administrative review filed on 17th February 2025. Through a letter dated 21st February 2025, the Respondent informed the Appellant that its complaint had been received and that a decision would be issued after a thorough review. He stated that if the Appellant noted that the Respondent failed to issue its decision within the specified time limit, the Appellant was required to file its Appeal to the Appeals Authority in

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compliance with section 121(2)(a) of the Act. He said that the Appellant complied with this provision of the law, and hence this Appeal.

The legal counsel distinguished the case of ***M/S Dezo Civil Contractors Company Ltd***, (supra), cited by the Appellant. He stated that this case does not support the Appellant's argument but rather supports the Respondent's submission as the Appeals Authority confirmed the debarment as the Appellant therein had submitted a forged bank guarantee.

The legal counsel similarly distinguished the case of ***M/S M.A.K Engineering Co. Ltd*** (supra), arguing in the present situation the waiver of the requirements favored the Appellant, resulting to its re- instatement in the Tender process and after re-evaluation it was found to be the lowest evaluated tenderer. However, it was disqualified in the due diligence for submitting unauthenticated certificates of its key personnel.

Finally, the Respondent prayed for the following reliefs: -

- i. Uphold the Respondent's decision of awarding the Tender to the proposed successful tenderer.
- ii. Dismiss the Appeal with costs for lack of merits and allow the Respondent to proceed with the Tender process; and
- iii. Recommend to PPRA that the Appellant should be blacklisted in accordance with the Act for misrepresentation of facts in the Tender process.



ANALYSIS BY THE APPEALS AUTHORITY

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

In resolving this issue, we reviewed the record of Appeal and observed that the Appellant's main contention is that, the disqualification from the tender process was improper for failure to submit a recommendation letter from the Respondent where it had an ongoing contract. In addition, the Appellant disputes the Respondent's re-evaluation of tenders as this exercise aimed at ensuring that the Appellant's tender is disqualified. It stated that after the Respondent had decided to re-instate the Appellant's tender, it should have awarded it the contract. The Appellant also complained of being punished for the submission of invalid certificates by its employees. It contended that it was required to be given a right to be heard before the disqualification.

In ascertaining the validity of the Appellant's arguments, we reviewed the record of Appeal and noted that the Respondent issued the first Notice of Intention to award on 14th February 2025 which specified that the Appellant was disqualified for failure to submit a recommendation letter from the Respondent. On 17th February 2025, the Appellant applied for administrative review to the Respondent. Through a letter dated 21st February 2025, the Respondent acknowledged to have received the Appellant's application for administrative review and replied that the decision thereof would be issued within a short time. However, the Respondent did not issue a decision within the specified time limit. Hence,



on 4th March 2025, the Appellant wrote a reminder letter to the Respondent. Again, the Respondent did not respond.

We reviewed sections 120(4), (6)(8) and 121(2)(a) of the Act which read as follows: -

"s. 120. -(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within five working days from the date the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or when that tenderer should have become aware of those circumstances, whichever is earlier.

(6) Within five working days after the submission of the complaint or dispute, or within seven days in case an independent review panel is constituted, the accounting officer shall deliver a written decision which shall-

*(a) state the reasons for the decision; and
(b) if the complaint or dispute is upheld in whole or in part indicate the corrective measures to be taken*

*(8) Where the accounting officer does not issue a decision within the time specified in subsection (7), **the tenderer submitting the complaint or dispute to the procuring entity shall be entitled immediately thereafter to institute proceedings under section 121 and upon institution of such proceedings, the***



competence of the accounting officer to entertain the complaint or dispute shall cease.

s. 121. -(2) A tenderer may submit a complaint or dispute directly to the Appeals Authority if-

(a) the accounting officer has not given a decision within the time prescribed under this Act, provided that a complaint or dispute is submitted within five working days after expiry of the period within which the accounting officer ought to have made a decision."

(Emphasis supplied)

The above provisions state clearly that an accounting officer is required to entertain complaints or disputes submitted to it within five working days. And he is required to issue his written decision within five working days or alternatively, seven working days if he constitutes an independent review panel from the date of receipt of a complaint. Where an accounting officer fails to issue a decision within the time prescribed under the Act, a tenderer may file an Appeal to the Appeals Authority within five working days from the date an accounting officer ought to have issued a decision.

Counting from 17th February 2025, when the Appellant applied for administrative review, the five working days within which the Respondent should have issued a decision expired on 24th February 2025. After having not received the accounting officer's decision, the Appellant was required



to file an Appeal to the Appeals Authority within five working days in compliance with section 121(2)(a) of the Act. Counting from 24th February 2025, when the accounting officer should have issued a decision, the five working days for the Appellant to file its Appeal to the Appeals Authority lapsed on 3rd March 2025. To the contrary, the Appellant filed its Appeal on 12th May 2025.

During the hearing the Appellant contended that it did not file an Appeal as the Respondent informed it that the decision would be issued within a short period of time. Based on requirements of the law, we are of the settled view that the Respondent's letter cannot supersede the requirements of the Act which specify the time limit within which the accounting officer is required to issue his decision and the time for filing of an Appeal to the Appeals Authority.

In view of the above position of the law, we find that we cannot proceed to entertain the Appellant's first ground of Appeal which relates to its failure to submit a recommendation letter from the Respondent. The Appellant was required to challenge the first reason given for its disqualification by way of an Appeal to the Appeals Authority pursuant to sections 120(8) and 121(2)(a) of the Act.

We further reviewed the record of appeal and observed that after the Appellant had filed an application for administrative review on 17th February 2025, the Respondent reviewed the complaint and realized that the Appellant was unfairly disqualified. Thus, the Appellant was reinstated in the Tender process and was subjected to re-evaluation. After completion



of the re-evaluation process, the Appellant's tender was found to be the lowest evaluated. Thereafter, it was subjected to a due diligence process. After its completion, the Appellant's tender was found to contain eight unauthenticated certificates of its key personnel. On 24th April 2025, the Respondent issued the second Notice of Intention to award which indicated that the Appellant's tender was disqualified for submitting unauthenticated certificates of its key personnel.

To ascertain if the disqualification of the Appellant's tender in this regard was justified, we reviewed the Tender Document and noted that Item 4 of Section IV - **Qualification and Evaluation Criteria**, clearly requires tenderers to provide details of their personnel with adequate qualifications as required by the procuring entity. It reads as follows: -

"4. Key Personnel

Key Personnel (Score: N/A)

Tenderer should provide details of their personnel with adequate qualifications as required by the procuring entity.

<i>Categories of Key Personnel</i>	<i>Education Level</i>	<i>Experience of Key Personnel</i>	<i>Number of Required Key Personnel</i>
<i>Kitchen Helpers</i>	<i>Certificate in Hotel Management/ Food and beverage</i>	<i>1</i>	<i>13</i>



<i>Professional Chefs: Chief Cook</i>	<i>Diploma in Hotel Management</i>	<i>1</i>	<i>1</i>
<i>Supervisor/ incharge</i>	<i>At least Diploma in Hotel Management Food and Beverage</i>	<i>1</i>	<i>1</i>
<i>Profession Assistant Chief cook</i>	<i>Diploma in Hotel Management/ Food and beverage</i>	<i>1</i>	<i>1</i>

To substantiate whether the Appellant complied with the above requirement, we reviewed the Appellant's tender submitted on the NeST and observed that in complying with the above quoted requirement, the Appellant listed sixteen names each was attached with qualification certificates and curriculum vitae.

We observed further from the record of Appeal that when the Respondent conducted due diligence on the Appellant, it sought confirmation of the validity of the Appellant's key personnel's certificates from relevant issuing institutions. Through letters dated 19th and 21st March 2025, the Respondent sought confirmation of the validity of the said personnel's

certificates from the Kilimanjaro Institute of Technology, the Njuweni Institute of Hotel Catering and Tourism Management, the National College of Tourism and the National Council for Technical & Vocational Education Training.

The record of Appeal indicates that on 21st and 24th March 2025, Kilimanjaro Institute of Technology and Management, Njuweni Institute of Hotel Catering and Tourism Management and National College of Tourism confirmed that the certificates issued in the name of Mjaka Kadilia, Calvin Felix Kinabo, Riziki Mkiteu, Daudi Nurdin Azizi, Keneth Godfrey Mkandala, Elias Benelias Mndewa, Damalis Raymond Kayola and Salome Frank were not issued by the respective institutions, proving indeed, they were not authentic.

This finding from the due diligence process was tabled before the Respondent's Tender Board which disapproved the award of the Tender to the Appellant for the above reason. The Tender Board further approved the award of the Tender to the second lowest evaluated tenderer named M/S Namis Corporate Ltd.

During the hearing, the Respondent confirmed that due diligence was also done to M/S Namis Corporate Ltd whereby certificates of the listed key personnel were verified from the issuing institutions. Through a letter dated 4th April 2024, the Respondent sought confirmation of key personnel certificates attached to the tender of M/S Namis Corporate Ltd from the Vocational Education and Training Authority Central Zone, National college of Tourism, Dar es Salaam College of Hotel and Business Studies and Datastar Training College which confirmed that the certificates of the key



personnel submitted by M/S Namis Corporate Ltd were authentic through letters dated 8th and 10th April 2025 respectively. After receiving the confirmation letters, on 11th April 2025, the Respondent's Tender Board approved the due diligence report and award of the Tender to M/S Namis Corporate Ltd.

From the above observations, we are of the firm view that the disqualification of the Appellant's tender for failure to comply with Item 4 - Section IV - Qualification and Evaluation Criteria was justified.

Consequently, we find the disqualification of the Appellant's tender to have complied with regulation 217(c) of the Regulations which states that a procuring entity would disqualify the tender that has not complied with the provided requirements.

Regarding the case of ***M/S Dezo Civil Contractors Company Ltd*** (Supra), we are of the view that the case does not support the Appellant's position. In this case, a tenderer was debarred for submitting a forged performance guarantee. Conversely, the case supports the Respondent's position that it properly disqualified the Appellant's tender for submitting unauthenticated certificates of key personnel.

We also reviewed section 189 of the Law of Contracts Act, Cap 345 which reads as follows: -

"s.189. A misrepresentation made, or a fraud committed, by an agent acting in the course of his business for his principal, has the same effect on an agreement made by such agent as if such misrepresentation or fraud had been made or committed

by the principal; but a misrepresentation made, or frauds committed, by an agent, in matters which do not fall within his authority, do not affect his principal”.

In view of the above position, the Appellant was duty bound to ensure that the submitted certificates of its key personnel were valid and from the relevant issuing institutions.

We further considered the case of ***M/S M.A.K Engineering Co. Ltd*** (*supra*) and that of ***Michael Mwakalula Njumba*** (*supra*) cited by the Appellant and observed that the same were not relevant to this Appeal.

Regarding the Appellant's contention that it was not accorded with the right to be heard after the findings of the due diligence team, we observe that since the confirmation of the authenticity of the key personnel certificates was from the relevant issuing institutions, there was no need for further verification from the Appellant. In addition, the Appellant was afforded a right to be heard through the second Notice of Intention to award which gave it five working days to challenge the reason given for its disqualification.

Given the above findings, we conclude the first issue in the affirmative that the disqualification of the Appellant's tender was justified.

2.0 To what reliefs, if any, are the parties entitled to?

Taking cognizance of the above finding, we hereby dismiss the Appeal for lack of merit. The Respondent may proceed with the Tender process in compliance with 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 19th day of June 2025.

HON. JUDGE (rtd) AWADH BAWAZIR



CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU.....



2. DR. GLADNESS SALEMA.....

