

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 51 OF 2024 - 2025

BETWEEN

M/S JIANGSU RAILTECO EQUIPMENT CO. LTD..... APPELLANT

AND

MARINE SERVICES COMPANY LTD.....RESPONDENT

DECISION

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu | - Member |
| 3. Ms. Sarah Bisanda | - 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

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| 1. Mr. Robert Mbetwa | - Country Representative |
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FOR THE RESPONDENT

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| 1. Ms. Amina Ntibampema | - Head of Legal Services Unit |
| 2. Mr. Sunga Mabeja | - Head of Procurement
Management Unit |

This Appeal was lodged by **M/S Jiangsu Railteco Equipment Co. Ltd** (hereinafter referred to as "**the Appellant**") against **Marine Services Company Limited** currently known as the **Tanzania Shipping Company Ltd** (hereinafter referred to as "**the Respondent**"). The subject matter of the Appeal concerns Tender No. TR173/2024/2025/G/65 for the designing, manufacturing, supplying, testing and commissioning of 30 MGR covered Large Bogie Wagons (CLB) and 20 MGR Container Carriage Bogie Wagons (CCB) (hereinafter referred to as "**the Tender**").

Based on the documents provided to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**"), the background of this appeal can be summarized as follows: -

The Tender was done through the 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 14th April 2025, the Respondent issued an invitation to eligible tenderers to participate in the Tender through the National e-Procurement System of Tanzania (NeST). By 24th April 2025, four tenders including the Appellant's were received by the Respondent who evaluated them and thereafter awarded the Tender to M/S CRRC Qiqihar Rolling Stock Co. Ltd (**the proposed awardee**) at a recommended contract price of United States Dollars Three Million Eight Hundred Forty One Thousand Eight Hundred (USD 3,841,800) VAT exclusive equivalent to Tanzania shillings Ten Billion One Hundred Twenty One Million Thirty Thousand and Ten only



(TZS 10,121,030,010) for a completion period of 365 days. Subsequently, the Tender Board approved the award as recommended by the Evaluation Committee.

Thereafter, the Respondent issued a Notice of Intention to award which notified the Appellant its intention to award the contract to the proposed awardee. Furthermore, it stated that the Appellant's tender was disqualified due to its submission of the source of funds being below Tanzania Shillings Fifteen Billion (TZS 15,000,000,000) as specified in the Tender Document.

Dissatisfied with its disqualification, the Appellant applied for administrative review to the Respondent. After considering the Appellant's application, the Respondent dismissed it for lack of merit. Aggrieved, on 24th June 2025, the Appellant filed this Appeal to the Appeals Authority.

When the matter was called on for hearing, the following issues were framed 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. Robert Mbetwa, the country representative.

He commenced on the first issue by stating that the Appellant faults the disqualification of its tender on three grounds; that the Respondent misinterpreted the financial evaluation criteria; it failed to consider the

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value for money requirement and lastly, the Appellant's proven experience. Mr. Mbetwa elaborated as follows: -

Firstly, on misinterpretation of the financial evaluation criteria, Mr. Mbetwa submitted that the Tender Document required tenderers to demonstrate access to financial resources by submitting proof of an average fund amount from any source to the tune of TZS 15,000,000,000. He averred that in complying with this criterion, the Appellant attached to its tender a Letter of Comfort from the Agricultural Bank of China Suzhou Branch which indicated that it was ready to support the Appellant for USD 3,650,000 equivalent to TZS 9.672 billion at the exchange rate of TZS 2,650. He stated that although the amount of TZS 9.672 billion was below the required threshold of TZS 15,000,000,000, however it was within the price quoted by the Appellant for this Tender.

Mr. Mbetwa submitted that the access to financial resources criterion allowed tenderers to demonstrate their access to financial resources by providing proof of various sources of funds. He averred that apart from the submitted letter of comfort, the Appellant was prepared to demonstrate additional sources of funds if it would have been required to do so. Thus, he challenged the Appellant's disqualification on this criterion prior to it being accorded an opportunity to demonstrate the said additional sources of funds.

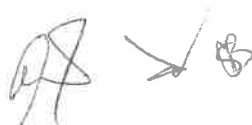
Mr. Mbetwa stated further that in evaluation of the tenders, the Respondent was required to comply with the requirements of section 87(1) and (2) of the Act read together with regulations 210(1) and (2) and 211(1) of the Regulations which require the basis for tender evaluation to be as specified in the Tender Document. He stated that the Tender

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Document has to specify the evaluation criteria, how such criteria would be quantified and that during the evaluation stage, the price factor was to be given primary consideration. He alleged that during the evaluation exercise, the Respondent failed to comply with these requirements of the law, and hence wrongly disqualified the Appellant.

Mr. Mbetwa went on to submit that the access to financial resources criterion was one of the requirements in the Tender Document, however it was inapplicable as it contained the word "SCORES: N/A". He was of the view that the applicable criteria for this Tender were given scores and non-applicable criteria were not given scores. He averred that during the evaluation, the Respondent was not required to consider criteria which did not have scores to disqualify tenderers. In view of this position, Mr. Mbetwa concluded that the Respondent's disqualification of the Appellant on a criterion which was inapplicable for this Tender contravened the law.

Secondly, the Appellant contested the Respondent's intention to award the Tender to the proposed awardee who had the highest price of USD 542,440 compared to the Appellant's. He contended that had the Respondent considered the Appellant's price, it would not have disqualified its tender but oddly proceeded to award the contract to a tenderer whose price was 17.16% higher than the Appellant's price. He further noted that if the Respondent had not disqualified the Appellant's tender based on an inapplicable criterion, it would have resulted in a saving of 17.16% which could have been allocated to other government projects. Thus, he contended that the Respondent's act in this regard indicated that it had failed to adhere to the value for money requirements as stipulated by the law.

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Thirdly, the Appellant challenged its disqualification as it possesses the proven relevant experience for the Tender. Mr. Mbetwa stated that the Appellant has demonstrated its experience by successfully executing a similar contract with the Tanzania Railways Corporation (TRC) for the supply of 100 MGR wagons. The contract demonstrates the Appellant's financial and technical capacity to execute the contract. Had the Respondent considered the Appellant's experience and its financial muscle, it would not have disqualified its tender for failure to comply with the access to financial resources criterion. Furthermore, Mr. Mbetwa argued that had the Respondent sought reference from TRC, it would not have disqualified the Appellant as it was the most responsive tenderer for award of the contract. Thus, it was his submission that the Appellant's disqualification was unjustified.

In view of the above submissions, he prayed for the following reliefs:

- i. Re- evaluation of the Appellant's tender using a proper interpretation of the financial criterion provided in the Tender Document.
- ii. Suspension of the Tender process pending determination of the Appeal.
- iii. Consideration of the references from TRC as part of the due diligence process.
- iv. Annul the proposed award of the tender and order for inclusion of the Appellant's tender in the re-evaluation process.
- v. To consider that the reasons which led to the Appellant's disqualification to be minor and order that the Appellant deserves to be considered for award of the Tender.

REPLY BY THE RESPONDENT

The Respondent's reply submissions were led by Ms. Amina Ntibampema Head of the Respondent's Legal Services Unit assisted by Mr. Sunga Mabeja, Head of the Procurement Management Unit.

In reply to the first ground of Appeal, she submitted that the Tender was advertised through NeST and criteria for evaluation were provided in the Tender Document. She stated that one of the criteria that tenderers were required to comply with was the access to financial resources. According to her, tenderers were required to demonstrate their access to financial resources by providing evidence of sources of funds to the tune of TZS 15,000,000,000.

She contended that in complying with this requirement, the Appellant submitted a Letter of Comfort with a value of USD 3,650,000 which was equivalent to TZS 9,672,500,000 and thus below the required amount of TZS 15,000,000,000 as specified in the Tender Document. During evaluation, the Appellant's tender was found to be non-compliant with the criterion and consequently its tender was disqualified.

In regard to section 87 of the Act and regulations 210 and 211 of the Regulations cited by the Appellant's representative, Ms. Ntibampema stated that the evaluation of tenders complied with the referred provisions which led to the disqualification of the Appellant's tender. She denied that the Respondent failed to adhere to the requirements of the law when evaluating the tenders.

On his part Mr. Mabeja submitted on the second and third grounds of Appeal by stating that the Appellant's price could not have been considered

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for award as its tender did not reach the price comparison stage. He elaborated that for a tenderer's price to be considered for award, it has to comply with both the commercial and technical criteria. In the Tender under Appeal, the Appellant's tender was disqualified at the commercial evaluation stage. Consequently, its price could not have been considered for the award as it did not reach the financial evaluation stage.

Mr. Mabeja stated further that the Appellant's experience could not substitute the requirement to comply with the access to financial resources criterion. He argued that for a tender to be considered for award, it was required to comply with all the criteria as provided in the Tender Document. Thus, the Appellant was fairly disqualified for failure to comply with the access to financial resources criterion.

In view of these submissions, Ms. Ntibampema prayed for the following orders: -

- i. Dismissal of the Appeal in its entirety.
- ii. Costs of the Appeal be borne by the Appellant.
- iii. Any other reliefs, the Appeals Authority deems fit to grant.

ANALYSIS BY THE APPEALS AUTHORITY

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

In resolving this issue, we considered the Appellant's first ground of Appeal where it contended to have complied with the access to financial resources criterion by submitting a Letter of Comfort with a value of USD 3,650,000 equivalent to TZS 9,672,500,000. It alleged that although the submitted

Letter of Comfort did not meet the specified value of TZS 15,000,000,000, the Appellant was prepared to provide evidence of additional funding sources if required. The Appellant added that access to the financial resources criterion was inapplicable for the Tender, and thus it ought not to have led to its disqualification.

Conversely, the Respondent countered the Appellant's claim by stating that the Tender Document clearly specified that in order to meet the criterion for access to financial resources, tenderers were required to demonstrate their access by submitting evidence of funding sources valued at TZS 15,000,000,000. However, the Appellant failed to comply with the requirement.

To determine the validity of the parties' contentions, we reviewed the Tender Document, focusing specifically on Item 3 of the Qualification and Evaluation Criteria which reads as follows:-

"3. Financial Situation and Performance

Access to Financial Resources (Sources of Fund) (SCORE: N/A)

Tenderers are required to demonstrate details of their sources of finance that show their ability to access adequate finances to meet the cash flow requirements of current and future contracts. (In the case of Joint Venture, compliance requirements are all Parties Combined - Must meet requirements).

<i>Average fund amount from all sources (any freely convertible currency proposed by bidder)</i>	<i>15,000,000,000</i>
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The provision clearly states that tenderers were required to demonstrate details of their financial resources by indicating sources of funds with a value of TZS 15,000,000,000.

In substantiating whether the Appellant complied with the access to financial resources criterion, we reviewed its submitted tender in NeST and observed in the slot where tenderers were required to demonstrate their access to financial resources, the Appellant attached a Letter of Comfort from the Agricultural Bank of China Suzhou Branch dated 28th March 2025 stating that the bank was ready to finance the Appellant in respect of the Tender at the value of USD 3,650,000 equivalent to TZS 9,672,500,000.

During the hearing the Appellant conceded that the amount it provided under the access to financial resources criterion did not comply with the value of TZS 15,000,000,000 as specified in the Tender Document. However, it contended that its price and proven experience should have been considered before disqualifying its Tender. It argued in the alternative that it should have been invited to demonstrate additional sources of funds. In support of this assertion, the Appellant attached in the Statement of Appeal a letter from the Agricultural Bank of China Suzhou Branch dated 18th April 2025 which demonstrated that the Appellant had a principal balance of RMB 45,000,000.

We reviewed the Appellant's tender in NeST and noted that the said letter dated 18th April 2025 was not attached to its tender. The letter was only attached to the Statement of Appeal, and hence it was not considered during the evaluation of tenders.

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Next, we reviewed regulations 210(1) and 213(1) and (2) of the Regulations which read as follows: -

"r. 210. -(1) The tender evaluation shall be consistent with the terms and conditions prescribed in the tender documents and such evaluation shall be carried out using the criteria explicitly stated in the tender documents.

r. 213. -(1) The procuring entity's determination of a tender's responsiveness shall be based on the contents of the tender itself without recourse to extrinsic evidence.

(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."

(Emphasis supplied)

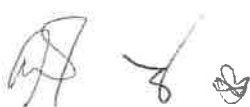
In terms of the above provisions, evaluation of tenders should be based exclusively on the terms and conditions prescribed in the Tender Document without recourse to extrinsic evidence. Furthermore, if a tender fails to comply with the criteria provided in the Tender Document, it should be rejected and may not be made responsive by correction or withdrawal of the deviation.

In applying the above provisions to the facts of this Appeal, we noted that the amount of USD 3,650,000 equivalent to TZS 9,672,500,000 provided by the Appellant in compliance with the access to financial resources criterion

was clearly below the specified amount of TZS 15,000,000,000. In view of this fact, we find the Respondent's disqualification of the Appellant's tender on this criterion to be justified.

Thereafter, we considered the Appellant's assertion that the access to financial resources criterion was inapplicable in this Tender for containing the words "SCORES: N/A", and thus was not to be evaluated. We reviewed the Tender Document and noted that under the commercial evaluation criteria scores were not applicable. However, scores were applicable in the technical evaluation criteria. In view of this fact, the words "SCORES: N/A" meant that scores would not be applied on commercial evaluation criteria. However, the commercial evaluation criteria would still be evaluated on the basis of whether one complied with the requirement or not. Thus, we find the Respondent's evaluation of the Appellant's tender on the criterion of access to financial resources was proper. Given this position, we reject the Appellant's assertion in this regard.

In the second ground of Appeal, the Appellant faults the Respondent's disqualification of its Tender on account that it intends to award the contract to a tenderer with the higher price than the Appellant's by 17.16%. The Appellant alleged that had the Respondent awarded it the Tender, the latter would have saved a substantial amount which could be used for execution of other projects. On its part the Respondent rebutted the Appellant's arguments by stating that the Appellant's tender was disqualified during the commercial evaluation stage, and thus its tender did not reach the financial evaluation stage where its price could have been considered for award.

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In substantiating the validity of the parties' arguments, we reviewed regulation 219 (a) of the Regulations which reads as follows:-

"r. 219. The successful tender shall be-

(a) the tender with the lowest evaluated tender price in case of goods, works or services, or the highest evaluated tender price in case of revenue collection, but not necessarily the lowest or highest submitted price, subject to any margin of preference applied".

(Emphasis supplied)

The provision states that a tender has to be awarded to the lowest evaluated tenderer in case of goods, works or services, or the highest evaluated tenderer in case of revenue collection, but not necessarily the lowest or highest submitted price. According to the evaluation report, the Appellant's tender was disqualified during the commercial evaluation stage due to non compliance with the access to financial resources criterion. Consequently, it did not reach the financial evaluation stage where its quoted price would have been compared with other tenderers who reached that stage. Under these circumstances, we find the Appellant's assertion to have no basis and hence the second ground fails.

Regarding the third ground claiming that the Appellant possesses the required experience as it had executed similar contract with the TRC for supply of 100 MGR wagons, we find that experience was not the reason which led to its disqualification. It is clear that the Appellant was disqualified for non-compliance with the access to financial resources

criterion. The fact that the Appellant had executed various relevant contracts did not cure its non compliance with the access to financial resources criterion. Regulation 210(1) of the Regulations requires the evaluation of tenders to be consistent with the terms and conditions provided in the Tender Document. It is apparent, the Tender Document provided clear requirements for each criterion which was to be evaluated. Thus, it would be improper for the Respondent to use the experience criterion to evaluate access to financial resources criterion. In view of this position, we equally reject this ground of Appeal.

Under the circumstances, 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 findings, we hereby dismiss the Appeal for lack of merit. The Respondent is allowed to 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 Respondent and in the absence of the Appellant though duly notified on this 30th day of July 2025.

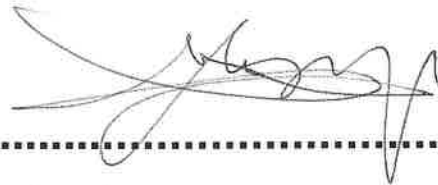
HON. JUDGE (rtd) AWADH BAWAZIR



CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU.....



2. MS. SARAH BISANDA.....

