

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 17 OF 2025 - 2026

BETWEEN

M/S BISECH INVESTMENTS COMPANY LTD.....APPELLANT

AND

TANZANIA AIRPORTS AUTHORITY (KIA).....RESPONDENT

DECISION

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (Rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu | - Member |
| 3. Ms. Florentina Sumawe | - 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. Ambroce Nkwera | - Advocate – Obligados
Advocates |
| 2. Mr. Samwel Samwel | - Logistic Manager |

FOR THE RESPONDENT

- | | |
|----------------------|--|
| 1. Mr. Amos Kinyunyu | - Acting Head Procurement
Management Unit |
| 2. Ms. Dommy Rimoy | - Acting Head of Legal Unit |



M/s **Bisech Investments Company Limited** (hereinafter referred to as "**the appellant**") filed this appeal against the **Tanzania Airports Authority** (hereinafter referred to as "**the respondent**") pertaining to **Tender No. TR169/2025/2026/NC/46** for Provision of Staff Transport Services at the Kilimanjaro International Airport (KIA) (hereinafter referred to as "**the tender**").

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

The tender was done through the National Competitive Tendering method, as prescribed 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 October 2025, the respondent invited eligible tenderers to participate in the tender vide the National e-Procurement System of Tanzania (NeST). Six tenders including the appellant's, were received by the submission deadline of 10th October 2025 and subsequently evaluated. Thereafter, the respondent recommended award to M/s Hexa Travel Ltd (**the proposed awardee**) at the contract price of Tanzania Shillings Ten Million Five Hundred Thousand only (10,500,000.00), Exclusive of VAT.

On 16th October 2025, the respondent issued a notice of intention to award, informing the appellant of its decision to award the contract to the proposed awardee. It stated that the appellant's tender was disqualified



because its financial capability was below the threshold provided in the Tender Document.

Dissatisfied with the disqualification, the appellant sought for administrative review from the respondent on 21st October 2025 but received no response. Consequently, the appellant filed this appeal with the Appeals Authority on 11th November 2025.

Upon receipt of the appeal, the Appeals Authority notified the respondent and requested a response within five working days. However, the respondent raised a Preliminary Objection that the appeal is time barred for being filed out of the time specified under the Act.

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

- 1.0 Whether the appeal is properly before the Appeals Authority.**
- 2.0 Whether the award of the tender to the proposed awardee was proper in law.**
- 3.0 Whether the disqualification of the appellant's tender was justified.**
- 4.0 What reliefs, if any, are the parties entitled to?**

During the hearing the respondent commenced by addressing the PO stating that the appeal was filed out of time contrary to the requirement of section 121(1) of the Act. The respondent claimed to have issued its decision on 22nd October 2025 with respect to the appellant's application



for administrative review. The appellant was required to file its appeal by 29th October 2025; however, the appeal was filed on 11th November 2025 out of the time limit and without leave to file appeal.

On its side, the Appellant stated that having received the Notice of Intention to award, it applied for administrative review to the respondent on 21st October, 2025. The respondent ought to have issued a decision on 28th October, 2025 but no response was received. Then the appellant was required to have filed its appeal by 4th November 2025. However, its effort to file the appeal to the Appeals Authority on 4th November 2025 and afterward, ended in futile due to internet disruption which occurred during the election period followed by a lockdown. It was until 11th November 2025 when the internet stabilized, and the Appellant was able to file its appeal before the Appeals Authority.

After careful consideration of the timeframe within which the appellant was required to file this appeal and the circumstances prevailed from 29th October 2025 to 4th November 2025, the respondent conceded to the timeframe and acknowledged that the appeal was properly before the Appeals Authority and subsequently prayed to withdraw the PO raised.

In view of this development, the parties proceeded to address the Appeals Authority on the merits of the appeal, focusing on the three remaining issues.

SUBMISSIONS BY THE APPELLANT

Mr. Ambroce Nkwera, learned advocate, presented the appellant's submissions outlining that the appeal centered on two grounds: the unfair



award of the tender to the proposed awardee and the unjust disqualification of the appellant's tender.

Regarding the award of the tender to the proposed awardee, the learned counsel argued that the proposed awardee should not have been awarded the tender due to lack of both specific and general experience criteria as instructed by the tender document. He referred to item 2 of Section IV – "Qualification and Evaluation Criteria", which required tenderers to demonstrate specific experience by submitting evidence of at least one contract executed at any Tanzania airport for a minimum period of one year. He claimed that the proposed awardee failed to meet this criterion as it had no proper contracts in the aviation industry and thus its tender should have been disqualified.

Further, the learned counsel submitted that had the respondent done a thorough examination of the documents submitted by both the proposed awardee and the appellant, it would have noticed the proposed awardee's lack of the requisite experience. And it would have noted the appellant's experience in the aviation industry which made it the most qualified tenderer for award of the tender.

Regarding the unfair disqualification of the appellant's tender, the learned counsel submitted that the notice of intention to award cited the reason for disqualification as failure to meet the financial capability requirement.

The learned counsel challenged this, claiming that the appellant had demonstrated adequate access to financial resources. He said the tender document required tenderers to prove access to financial resources

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amounting to TZS 2,500,000,000.00. In proving its financial capability, the appellant submitted two bank statements with balances of TZS 500,000,000.00 and TZS 200,000,000.00 respectively.

The learned counsel emphasized that although the total of TZS 700,000,000.00 was less than the required TZS 2,500,000,000.00, it was sufficient for the tender with a value TZS 800,000,000.00. He argued that the financial capability requirement was unrealistic and unreasonable, as it bore no relation to the tender's contract value. He said the respondent should have required a financial capability amount closely aligned with the contract value rather than the inflated figure in the tender document. Consequently, it was his view that the respondent erred in law for setting an unrealistic financial threshold.

Additionally, the learned counsel pointed out that the appellant was eligible for award of the tender as it quoted a lower price than the proposed awardee. He claimed that awarding the tender to the appellant would have resulted in substantial savings, which could have been redirected to other activities in the respondent's operations.

In conclusion, the learned counsel prayed for the following reliefs: -

- i. The appeal to be allowed.
- ii. The tender to be re-evaluated and awarded to the appellant.
- iii. Alternatively, the respondent be ordered to re-advertise the tender.

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REPLY BY THE RESPONDENT

Mr. Amos Kinyunyu, acting Head of the Procurement Management Unit (HPMU), assisted by Ms. Dommy Rimoy, acting head of the Legal Unit, presented the respondent's submissions.

On the first ground of appeal, Mr. Kinyunyu averred that the tender document required tenderers to demonstrate specific experience in providing staff transport services at an airport for a minimum period of one year. To satisfy this criterion, the proposed awardee submitted a contract with Dodoma Airport proving its experience in the aviation industry. Therefore, he contended that the proposed awardee met the specific experience requirement and was qualified for the tender award.

He went on to submit that according to item 2 of Section IV – "Qualification and Evaluation Criteria", tenderers were required to submit evidence of one contract executed at one airport between 1st January 2020 to 31st December 2024. During the evaluation, the proposed awardee's contract with Dodoma Airport was dated 26th May 2025 for a one-year period. Mr. Kinyunyu explained that since no other tenderer met this criterion, the respondent awarded the contract to the proposed awardee despite the contract being executed outside the specified period.

Mr. Kinyunyu maintained that the proposed awardee rightfully qualified for the tender award as the evaluation process complied with legal requirements, making the award fair and just.

Submitting on the second ground of appeal, Mr. Kinyunyu stressed that the appellant's tender failed to meet the financial capability criterion requiring

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demonstration of access to financial resources amounting to TZS. 2,500,000,000.00, as specified under Item 3 – Section IV, Qualification and Evaluation Criteria. He stated that the evaluation considered factors such as liquidity, turnover, credit availability and overall contractual performance capability. Thus, he said, the appellant was disqualified after being found non-compliant with this criterion.

Addressing the appellant's contention that the TZS 2,500,000,000.00 financial requirement was unrealistic, Mr. Kinyunyu argued that this threshold was set to ensure the successful service provider has reliable vehicles, could guarantee consistent and timely service delivery. He stated that this criterion was inserted following previous experience where the quality of the services offered suffered due to limited capacity of the service provider to maintain vehicles promptly. He said, although the tender was valued at TZS 800,000,000.00, as the appellant correctly pointed out, the higher financial capability requirement was intended to assure the respondent of the tenderer's financial strength.

Mr. Kinyunyu emphasized that the TZS 2,500,000,000.00 requirement was neither unrealistic nor unreasonable, as other tenderers met this requirement. Furthermore, if the appellant considered the criterion unrealistic, it ought to have sought clarification before the tender submission deadline. By participating without raising any concern, the appellant implicitly accepted the tender terms and conditions. Therefore, raising this argument at this point amounted to an afterthought.

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Concerning the appellant's assertion that it quoted a lower price, Mr. Kinyunyu clarified that quoting a lower price does not guarantee tender award. Public procurement laws require awarding the contract to the lowest evaluated tenderer, not merely the lowest quoted price. Since the appellant was disqualified at the commercial evaluation stage for failing to comply with the financial capability criterion, its tender did not proceed to subsequent evaluation stages, including price comparison. Thus, the appellant's argument on this point is baseless.

In conclusion, Mr. Kinyunyu prayed for the appeal to be dismissed for lack of merit.

ANALYSIS BY THE APPEALS AUTHORITY

Before commencing analysis of the issues, we find it appropriate to point out that at the outset of the hearing, the respondent withdrew its preliminary objection. Consequently, we will not consider the first issue regarding the preliminary objection but will proceed to determine the remaining issues as follows: -

2.0 Whether award of the tender to the proposed awardee was proper in law.

In resolving this issue, we considered the parties' rival contentions. The appellant disputes award of the tender to the proposed awardee, arguing that the latter lacks the specific experience criterion stipulated in the tender document. Conversely, the respondent maintains that the proposed

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awardee qualifies for the tender award, having complied with the requisite specific experience criterion as stipulated in the tender document.

We examined item 2 of Section IV - Qualification and Evaluation Criteria, which reads as follows: -

"Item 2. Experience

Specific Experience (Score: Comply/ Not comply to specified minimum requirements

Specific and Contract Management Experience: A minimum number of similar contracts based on the physical size, complexity, methods/technology and /or other characteristics described in the PE Requirements on contracts that have been satisfactorily and substantially completed (substantial completion shall be based on 80% or, more of the completed assignments under the contract) as a prime contractor/ supplier/service provider, joint venture, management contractor/ supplier, service provider or sub-contractor/ supplier service provider for mentioned duration. (In case of Joint Venture, compliance requirements are: All Parties – Must Meet requirements). In case of JVCA, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JVCA meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

<i>Specific experience</i>	<i>The service provider must have experience in the Provision of Staff Transport Services and should have completed at least one contract at an airport</i>
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	<i>in Tanzania for a duration of no less than a year.</i>
<i>Specific Experience Start Year</i>	2020-01-01
<i>Specific Experience End Year</i>	2024-12-31
<i>Number of Specific Experience Contracts</i>	3
Value of each specific experience contract in the specified tender currency	500000000"

(Emphasis added)

In terms of the cited provision, tenderers are required to demonstrate specific experience criterion by submitting three contracts of a similar nature, with at least one involving provision of staff transport services at any airport in Tanzania. Each contract must have been executed between 1st January 2020 to 31st December 2024, with a minimum value of TZS 500,000,000.00.

To determine whether the proposed awardee complied with this criterion, we reviewed its tender in NeST and noted the following contracts provided as evidence of compliance: -

- i. A vehicle leasing contract with Bank of Africa Tanzania, signed in December 2024; Contract value was not indicated.



- ii. A Local Purchase Order for motor vehicle hiring services issued by Tanzania Commercial Bank Company Ltd, valued at TZS 26,550/- based on a quotation dated 25th April 2025.
- iii. A vehicle leasing services agreement with AGRA, signed on 2nd January 2024; Contract value was not indicated.
- iv. A Local Purchase Order for provision of staff transport services at Dodoma Airport, valued at TZS 229,132,400.00 (VAT inclusive), entered on 26th May 2025.
- v. Notification of award from Garda World dated 1st March 2023 for the supply of car hire and leasing services.

Upon review of the attached contracts, we observed that all contracts except one were not for provision of staff transport services at an airport. Instead, they involved car leasing or hiring services, which differ from the tender's requirements. Furthermore, the contracts did not meet the minimum value of TZS 500,000,000.00 specified in the tender document.

The only contract similar in nature to the tender was the one with Dodoma Airport for provision of staff transport services, signed on 26th May 2025, valued at TZS 229,132,400.00 (VAT inclusive). However, according to the tender document, the relevant contract must have been executed between 1st January 2020 to 31st December 2024 and meet the minimum value of TZS 500,000,000.00. The Dodoma airport contract was signed outside the specified period and its value was below the required minimum.

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Based on the foregoing observations, we conclude that the proposed awardee failed to demonstrate the specific experience criterion as stipulated in the tender document.

Tenderers were also required to meet the general experience criterion, as detailed below:

"General Experience (SCORE:/Not Comply to specified minimum requirements)

Tenderers should provide details of their previous and ongoing contracts to evidence their general experience of non consultancy services.

<i>General experience start date</i>	<i>2024-01-01</i>
<i>General experience end date</i>	<i>2024-12-31</i>
<i>Number of contracts</i>	<i>3</i>
<i>Contract value in the specified currency</i>	<i>500,000,000"</i>

(Emphasis added)]

The provision requires tenderers to demonstrate the general experience criterion by submitting three contracts, each valued at a minimum of TZS 500,000,000.00, executed between 1st January 2024 to 31st December 2024.

To verify whether the proposed awardee complied with the requirement, we reviewed its tender in NeST and found the following documents: -

- i. A notification of pre-qualification for car hire and leasing services issued by GardaWorld on 1st March 2023.



- ii. A vehicle leasing services agreement with AGRA, signed on 2nd January 2024.
- iii. A vehicle leasing contract with the Bank of Africa Tanzania Ltd, signed in December 2024.

After reviewing the attached contracts, we observed that the notification of pre-qualification from GardaWorld cannot be considered as a contract, since it merely confirms eligibility for certain work. Additionally, the two leasing contracts do not meet the minimum contract value of TZS 500,000,000.00 as specified in the tender document.

Consequently, we find the proposed awardee failed to satisfy the general experience criterion outlined in the tender. Therefore, it should have been disqualified from the tender process.

Given the finding that the proposed awardee did not comply with the specific and general experience criteria, the respondent's decision to award the tender to it contravenes regulation 213(2) of the regulations which states: -

"r.213 (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 that deviation".

(Emphasis supplied)



Under these circumstances, we conclude negatively on the second issue, that the award of the tender to the proposed awardee was not lawful.

3.0 Whether the disqualification of the appellant's tender was justified

In this appeal, the appellant disputes its disqualification for failing to meet the financial capability requirement. The appellant contended that it demonstrated its financial capability by submitting bank statements attached to its tender, showing the access to financial resources criterion. Consequently, the appellant argued that the respondent erred in disqualifying its tender.

The respondent, however, maintains that the appellant was disqualified during the commercial evaluation stage for failing to meet the financial resources requirement, as the submitted bank statements did not total the minimum amount of TZS 2,500,000,000.00 specified in the tender document. Therefore, the respondent asserts that the appellant's disqualification was fair and justified.

To assess these competing claims, we examined item 3 of Section IV – Qualification and Evaluation Criteria which states: -

"Item 3 Financial Situation and Performance

Access to Financial Resources (Sources of Fund) Score: Comply/ Not Comply to specified minimum requirements)

Tenderers are required to demonstrate details of their sources of finance and their ability to access adequate finances to meet cash flow requirements of current and future contracts. (in case of Joint



Venture, compliance requirements are all parties Combined – Must meet the requirements).

<i>Average fund amount from all sources (any freely convertible currency proposed by bidder.</i>	<i>2500000000”</i>
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(Emphasis Added)

The above item requires tenderers to demonstrate access to financial resources totaling TZS 2,500,000,000.00 from all sources to meet cash flow demands of both existing and future contracts.

In determining whether the appellant complied with this requirement, we reviewed its tender submitted in NeST. In the section requiring evidence of access to financial resources, the appellant declared “cash and bank TZS 500,000,000” and uploaded a bank statement from Equity Bank Tanzania Ltd dated 27th June 2024, showing a balance of TZS 430,343,215.98. The appellant also declared access to lines of credit amounting to TZS 200,000,000.00 and attached another bank statement from Equity Bank Tanzania Ltd, reflecting a balance of TZS 69,456,921.23 for the period from 23th May 2023 to 13th June 2023.

Considering these figures, the combined total of TZS 430,343,215.98 and TZS 69,456,921.23 falls significantly short of the minimum requirement of TZS 2,500,000,000.00 set forth in the tender document. Furthermore, although the tender document does not specify a timeframe for financial evidence, the attached bank statement does not reflect the appellant’s



current financial status, as they cover the period from 2023 to July 2024, while the tender was advertised in October 2025.

Based on these observations, we find that the appellant's submitted bank statements do not satisfy the access to financial resources criterion. And therefore, we find the appellant's disqualification on this ground is justified.

In the light of this finding, the respondent's decision to disqualify the appellant's tender is proper and consistent with regulation 211 (2) (g) and (k) of the Regulations, which states: -

"r. 211 (2) The following deviations from substantial commercial terms and conditions shall justify rejection of a tender:

(g) failure to comply with minimum experience criteria specified in the tender document.

(k) failure to submit major supporting documents to determine substantial responsiveness of a tender as stipulated in the tender documents."

(Emphasis supplied)

The appellant further argued that the requirement to demonstrate financial capability of TZS 2,500,000,000 was unrealistic and unreasonable. We observe that if the appellant believed that this requirement would undermine fair competition, it should have had sought clarification from the respondent before the tender submission deadline. Had the respondent maintained its position, the appellant was then obligated to lodge a complaint within five working days of becoming aware of the respondent's stance, in accordance with section 120(1) and (4) of the Act. The

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provision requires a tenderer to submit a complaint to the procuring entity promptly after becoming aware of the circumstances giving rise to it.

The appellant neither sought for clarification nor submitted a complaint within the prescribed timeframe. Consequently, raising this issue only after disqualification for failing to meet the financial capability criterion is legally untenable. The complaint is time-barred and cannot be entertained at this stage.

Regarding the appellant's assertion that it had quoted a lower price, but the tender was awarded to a higher-priced bidder, we find this argument to be also untenable. As established hereinabove, both the appellant and the proposed awardee failed to comply with the tender document's requirements and both should have been disqualified, none of them should have been considered during the financial evaluation stage, as their tenders were non responsive. For this reason, the appellant's argument on this point is equally rejected.

In conclusion, the third issue is answered affirmatively that the appellant's disqualification was justified.

4.0. What reliefs, if any, are the parties entitled to?

After considering the findings on the second and third issues, we partly allow the appeal by ruling that the award of the tender to the proposed awardee was improper. However, the appeal is partly dismissed with respect to the justification for disqualifying the appellant's tender. The respondent is hereby ordered to re-start the tender process in full compliance with the law. We make no order as to costs.

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It is so ordered.

This decision is binding and enforceable under section 121(7) of the Act.

The parties have been informed of their right to Judicial Review pursuant to section 125 of the Act.

This decision is delivered in virtual presence of the parties on this 1st day of December 2025.

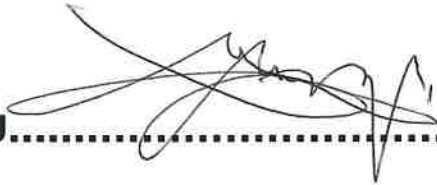
HON. JUDGE (rtd) AWADH BAWAZIR



CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU.....



2. MS. FLORENTINA SUMAWE.....

