

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 42 OF 2024-2025

BETWEEN

M/S BOGETA ENGINEERING LTD.....APPELLANT

AND

MBEYA UNIVERSITY OF SCIENCE

AND TECHNOLOGY.....RESPONDENT

DECISION

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu | - Member |
| 3. Mr. Raphael Maganga | - 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. Eng. John Bogomba | - Managing Director |
| 2. Mr. John Mahegere | - Director of Administration and
Human Resources |
| 3. Mr. Shaffi Zuberi | - Accountant |

FOR THE RESPONDENT

- | | |
|----------------------|---|
| 1. Mr. William Mambo | - Legal Expert |
| 2. Mr. Disth Japhet | - Head of Procurement
Management Unit (HPMU) |
| 3. Mr. Joseph Paul | - Senior Assistant Supplies Officer |

4. Mr. Atukuzwe Fungo

- Estate Officer

The Appeal was lodged by **M/S Bogeta Engineering Ltd** (hereinafter referred to as "**the Appellant**") against the **Mbeya University of Science and Technology** known by its acronyms "**MUST**" (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR83/2024/2025/W/15 for the Proposed Rehabilitation and upgrading of Mtwara Kawaida Teachers College to MUST Mtwara Campus College - Package 03 (hereinafter referred to as "**the Tender**").

According to documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**") the background of this Appeal may be summarized as follows: -

The Tender was done through the National 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 24th March 2025, the Respondent, through the National e-Procurement System of Tanzania (NeST), invited eligible tenderers to participate in the Tender. By on 4th April 2025, nine tenders were received by the Respondent including that of the Appellant.

The tenders were subjected to an evaluation process by the Evaluation Committee which recommended award of the Tender to M/S Mahimbo and Company (T) Ltd (**the proposed successful tenderer**). The recommended contract price was Tanzania Shillings One Billion One Hundred Twenty-Seven Million Eight Hundred Ninety-Seven Thousand Six



Hundred only (TZS 1,127,897,600/-) VAT exclusive. Thereafter, the Tender Board at its meeting held on 16th May 2025, approved the award of the Tender as recommended.

On 20th May 2025, the Respondent issued a Notice of Intention to award which informed the Appellant that it intended to award the Tender to the proposed successful. Furthermore, the Notice stated that the Appellant's tender was not considered for award due to its failure to comply with the following requirements: -

- i. General and specific experience;
- ii. Construction management strategy;
- iii. Mobilization schedule;
- iv. Method statements; and
- v. Key personnel specifically ICT specialist.

Dissatisfied with its disqualification, on 20th May 2025, the Appellant applied for administrative review to the Respondent. Thereafter, on 24th May 2025, the Respondent issued its decision which rejected the Appellant's application for administrative review. Aggrieved further, on 30th May 2025, the Appellant filed this Appeal to the Appeals Authority.

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

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

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



SUBMISSIONS BY THE APPELLANT

The Appellant's submissions were made by Eng. John Bogomba, Managing Director.

In the first ground of Appeal, Eng. Bogomba, disputes the Appellant's disqualification for failure to comply with the general and specific experience criteria. He submitted that the Appellant had complied with the experience requirements as provided in the Tender Document. And that the Appellant has more than twenty-one (21) years of experience in the construction industry and had executed thirty six projects which had a greater value than that of the disputed Tender.

Eng. Bogomba submitted that the Tender Document required tenderers to submit three contracts with a value of not less TZS 500,000,000.00 and his company complied by attaching fourteen contracts to prove its general and specific experience. During the hearing Eng. Bogomba conceded to have attached only two contracts which were within the specified duration and had the required contract value. However, it was his submission that based on its experience which was demonstrated by the said fourteen contracts, the Appellant's tender should not have been disqualified. He was of the view that had the Respondent's evaluators been keen and competent, they would have noted that the Appellant had complied with the required experience.

It was his further submission that the general and specific experience requirements were not among mandatory criteria for the Tender. He argued that these should not have been used to disqualify the Appellant's Tender. He added that the Appellant attached two contracts which



complied with the Tender requirements and therefore the Respondent should have weighed if the missing contract could have led to a disqualification.

Eng. Bogomba submitted further that the Respondent's disqualification of its tender would lead it to incur a loss of over TZS 214,000,000.00 which could have been saved and used in other projects had the Appellant's tender been considered for award.

In the second ground of Appeal, Eng. Bogomba complained that the Appellant was improperly disqualified for allegedly failing to comply with the Construction Management Strategy criterion. It was his contention that the company complied with this requirement by submitting a Construction Schedule which included a Program of Works for the whole project through the NeST, and if it were not relevant to the Tender, the system would have barred the Appellant to proceed to the next step. He argued that since the NeST accepted the uploaded document, it duly complied with this criterion; meaning it submitted the relevant document.

Eng. Bogomba went on to say that the Respondent should have not disqualified the Appellant's tender for failure to comply with this criterion since the Tender Document allows it to be revised before signing of the contract.

In the third ground of Appeal alleging that the Appellant failed to comply with the Mobilization Schedule criterion, Eng. Bogomba submitted that it did comply with the format provided by the Respondent in NeST. He elaborated that tenderers were guided by the requirements and template

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provided in preparing documents for the Tender. And that the Mobilization Schedule requirement was one of the criteria whose sample template was provided in NeST. Thus, he urged us to find that it was not proper for the Respondent to disqualify the Appellant on this criterion.

Regarding the fourth ground of Appeal faulting the Appellant for failure to comply with the Method Statement requirement, Eng. Bogomba submitted that the Respondent provided a sample format of the required method statement in the NeST. In complying with the criterion, the Appellant submitted a Method Statement that was prepared in accordance with the provided format in the Tender Document but was surprised by the disqualification.

It was his further submission that the Method Statement criterion was not among the mandatory requirements of the Tender, and therefore, it should not have been used to disqualify tenderers. He added that the Respondent was required to evaluate tenders based on score points on each criterion. And therefore, the Appellant's failure to comply with some of the criteria should not have led to its disqualification as its scores could not have been below the required minimum score points.

In the fifth ground of Appeal alleging that the Appellant did not comply with the key personnel requirement by failing to submit the name of an ICT specialist, Eng. Bogomba averred that the Tender Document required tenderers to submit four key personnel including an ICT specialist, a site technician, a project manager and an electrical engineer. That it submitted names and detailed information of three of the required key personnel without providing the name or details of the ICT specialist. It was his view

that such failure should not have outweighed the other three key personnel the company had submitted. It was his other argument that the failure was not fatal as the Respondent ought to have assessed whether the anomaly warranted a disqualification of the tender as it could have invited the Appellant for negotiations where the noted anomaly would have been rectified.

Finally, he prayed to the Appeals Authority to review the Tender process and order award of the Tender to the Appellant in compliance with Clause 47.1 of the Tender Document.

REPLY BY THE RESPONDENT

The Respondent's reply submissions were made by Mr. William Mambo, legal expert.

In reply to the first ground of Appeal, he pointed out that the Appellant was disqualified for failure to comply with the experience criteria requirements. According to the Tender Document, tenderers were required to demonstrate their specific and general experience by submitting three contracts executed from 1st January 2021 to 31st December 2024 and further that each should have a value of not less than TZS 500,000,000.00. In complying with this requirement, the Appellant submitted several contracts but only two were relevant to the requirements of the Tender by being within the stipulated period and having the relevant value.

Mr. Mambo submitted that the Appellant had stated that it had more than twenty-one years' experience in the construction industry and had executed several projects which were more significant than the Tender



under Appeal. Mr. Mambo averred that if indeed the Appellant had the required experience, it ought to have demonstrated it by complying with the provided requirements in the Tender but it dismally failed in its tender submitted in NeST which led to its disqualification.

In rebuttal to the second ground of Appeal, Mr. Mambo submitted that the Construction Management Schedule submitted by the Appellant was not in a bar chart as required by the Tender Document. He said the Appellant submitted a health and safety policy contrary to what was required under this criterion. That the submitted document did not indicate a construction schedule showing the completion time and resources needed in executing various tasks under the project. Consequently, that the Appellant's tender was found to be non-responsive during the evaluation stage.

In response to the Appellant's assertion that its tender should not have been disqualified for failure to comply with the Construction Management Strategy criterion as it could have been revised before signing of the contract, Mr. Mambo argued that the Appellant was required to comply with the criteria provided in the Tender Document for it to qualify for award of the Tender and signing of the contract. Therefore, the Respondent could not have qualified a tenderer just for the purposes of correction or revision of the submitted documents before signing the contract. In view of this argument, Mr. Mambo urged the Appeals Authority to disregard the Appellant's argument in this regard.

In reply to the third ground of Appeal, Mr. Mambo stated that tenderers were required to submit documents indicating a Mobilization Schedule for

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personnel, equipment and materials. In the case at hand, the Appellant submitted a document which did not show how mobilization schedule would be done. He said, the Appellant alleged to have used the sample format provided in NeST but he argued that the Appellant being an experienced contractor, it ought to submit a proper mobilization schedule even if the provided sample was unclear on the required details. It was his view that that the Appellant was required to comply with the paramount requirements provided in the Tender Document and not the issued template.

Mr. Mambo responded to the fourth ground of Appeal by stating that the Appellant's disqualification for failure to comply with the Method Statement criterion was justified as the submitted document did not indicate clear details on how works would be executed and completed in accordance with the proposed program.

Regarding the fifth ground of Appeal, Mr. Mambo stated that the Tender Document required tenderers to provide details of their key personnel which included an ICT specialist, a project manager/site manager, an electrical engineer and a site technician. However, the Appellant submitted names and details of three personnel to wit, a project manager, an electrical engineer and a site technician without including the name and details of an ICT specialist in the list. Hence, it was his assertion that the Appellant was properly disqualified for its failure to comply with this criterion.

Responding to the Appellant's contention that it ought to be invited for negotiations, Mr. Mambo submitted that the Appellant could not have been



invited for negotiations as it was not the lowest evaluated tenderer. According to the law, only the lowest evaluated tenderer is invited for negotiations. He argued that the Appellant could not be invited for negotiations as it was not the lowest evaluated tenderer after being disqualified at the technical evaluation stage.

In regard to the Appellant's claim that the Respondent would have had saved TZS 214,000,000.00, had the tender been awarded to it, Mr. Mambo averred that according to the law, award is made to the lowest evaluated tenderer. That in the disputed Tender, the Appellant was not the lowest evaluated tenderer and hence it could not be awarded the Tender. It was his argument that under these circumstances, the question of value for money could not arise.

To support his position, he cited the case of ***E1 Limited versus Bank of Tanzania and Another***, Miscellaneous Cause No. 2 of 2022, High Court of Tanzania Main Registry at Dar es Salaam, where the court held that: -

"...value for money is also determined by considering other two aspects namely, quality and delivery in respect of the prescribed specifications and criteria. Apart from price, the procuring entity is entitled to consider the quality and delivery of the prescribed specification."

In view of the above, Mr. Mambo concluded his submissions by stating that the Appellant was fairly disqualified from the Tender process. It was his view that the disqualification was proper and in accordance with regulations 173, 210 and 211 of the Regulations.

Finally, the Respondent prayed that the Appeals Authority review the Tender process within a short time in order to allow it to proceed with the same as it involves one of the strategic projects aimed at allowing students to start their studies in a conducive environment by October 2025.

ANALYSIS BY THE APPEALS AUTHORITY

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

In ascertaining whether the disqualification of the Appellant's tender was justified, we analysed each of the five grounds of Appeal as hereunder: -

(i) Failure to comply with general and specific experience

In this ground, the Appellant alleges to have complied with the experience requirement criterion in the Tender document while on the hand the Respondent vehemently denies the claim. In resolving this impasse, we went through the parties' contentious arguments and reviewed the submitted documents in the NeST.

In particular, we reviewed Item 1 of Section IV - Qualification and Evaluation Criteria which requires tenderers to demonstrate their specific and general experience by attaching to their tenders three contracts executed from 1st January 2021 to 31st December 2024 each with a value of not less than TZS 500,000,000.00. It reads as follows: -

"1. Experience

Specific experience (SCORE: N/A)

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 completed assignments under the contract) as a prime 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 the 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>Construction Building Contracts in role of prime contractor</i>
<i>Specific Experience Start Year</i>	<i>2021-01-01</i>
<i>Specific experience End Year</i>	<i>2024-12-31</i>
<i>Number of Specific Experience Contracts</i>	<i>3</i>
<i>Value of each specific experience contract in the specified tender currency</i>	<i>500000000</i>

General Experience (SCORE: N/A)

Tenderer should provide details of their previous and on-going contracts to evidence their general experience in construction.

<i>General Experience start date</i>	2021-01-31
<i>General Experience end date</i>	2024-12-31
<i>Number of contract</i>	3
<i>Contract value</i>	500000000"

In ascertaining whether the Appellant complied with the above requirement, we revisited its tender submitted in the NeST and noted that at the slot where specific and general experiences were to be demonstrated, the Appellant attached copies of fourteen executed contracts but only two were relevant to the requirements of the Tender. These were: -

- i) Contract No. 007/CCP/211158/W/2020/21/03-LOT3 for construction of four subordinate courts at Kaliua in Tabora Region, Uvinza, Buhingwe and Kakonko in Kigoma Region. The contract was between the Judiciary of Tanzania - High Court Kigoma Centre and the Appellant with a value of TZS 3,693,466,880.04. The contract period was from 26th October 2021 to 28th September 2022.
- ii) Contract No. ME012/2018-19/HQ/W/40/Lot3 for construction of infrastructure for the Ministry of Agriculture at Mat Mubondo. The contract was between the Ministry of Agriculture and the Appellant with a value of TZS 559,417,945.00. The contract commencement date was from 10th July 2021 to 11th November 2022.

It is crystal clear that the Appellant failed to comply with the general and specific experience requirements by submitting only two relevant contracts instead of three as required by the Tender Document. Based on this

finding, we are of the firm view that the Appellant's failure to submit three contracts as required by Item 1 of Section IV - Qualification and Evaluation Criteria justified disqualification of the tender.

We therefore reject this ground. The Appellant was required to comply the experience criterion as provided in the Tender Document by providing three relevant contracts. We also reject the Appellant's argument that the disqualification should have been based on the weighing scores. The Tender Documents does not provide for scores. It simply requires compliance.

(ii) Failure to comply with construction management strategy

In the second ground of appeal, the Appellant claimed to have submitted a document showing the time to be taken for completion of the contract and the resources needed for the execution of various tasks in the intended project. The Respondent denied that the Appellant complied with this criterion as it submitted a Compliance Licence from OSHA and an occupational health and safety policy which were not relevant for this part.

According to Item 4 of Section IV - Qualification and Evaluation Criteria, tenderers were required to submit a construction schedule which would detail the time to be taken and resources needed for execution of various tasks in the intended project. It reads as follows: -

"Item 4 Technical Submission

Construction Management Strategy (SCORE: N/A)

Tenderer is required to submit Construction Schedule showing time taken and resources required in execution of various tasks,



presented in bar chart. The Construction Schedule must reflect construction period stipulated in the Tendering Documents.

<i>Construction Management Strategy</i>	<i>Provide Construction Management Strategy for the project"</i>
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After reviewing the Appellant's tender in the NeST, we observed that in the Construction Management Strategy slot, the Appellant attached a compliance licence issued under the Occupational Health and Safety Act, No. 5 of 2003. It has also attached a letter addressed to the Respondent which indicated how it would comply with environmental matters. None of them detailed the time and resources needed for execution of various tasks under the intended contract as required. It is apparent that the Appellant equally failed to comply with this criterion. And we agree with the Respondent that the Appellant's disqualification on this ground was proper.

(iii) Failure to provide details of the ICT personnel

In the fifth ground of Appeal, the Appellant alleges to have complied with the key personnel requirements by submitting the names and details of three required key personnel without including the ICT specialist. On its part, the Respondent stated that the failure to submit an ICT specialist was a major deviation and a ground for the Appellant's disqualification.

According to Item 3 of Section IV - Qualification and Evaluation Criteria, tenderers were required to provide details of their key personnel with their qualifications. It reads as follows: -



"Key Personnel (SCORE: N/A)

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

Categories of Key Personnel	Education Level	Experience of Key Personnel	Number of required Key Personnel
<i>Project Manager/ Site Engineer</i>	<i>Bachelor in Civil Engineering, Must be registered by relevant board</i>	<i>5 years in building construction</i>	<i>1</i>
<i>Electrical Engineer</i>	<i>Bachelor in Electrical Engineering, Must be registered by relevant board</i>	<i>3 years</i>	<i>1</i>
ICT Specialist	Bachelor in ICT, Bachelor in Computer Science, Bachelor in Computer Engineering, Bachelor in Telecommunication Engineering.	3 years	1
<i>Site Technician</i>	<i>Diploma in Water Supply Engineering, Diploma in Plumbing Engineering.</i>	<i>3 years</i>	<i>1"</i>

(Emphasis supplied)

We reviewed the Appellant's tender in NeST and noted that in the key personnel slot, the Appellant had listed the names of John Kengere Bogomba as a project manager, Joseph Bareli Kuboja as an electrical mechanical engineer and John Joseph Kabuche as a site engineer. It did not provide a name for an ICT specialist as required. In view of this fact,

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we find the Appellant's disqualification for failure to comply with key personnel requirement was proper as it had not submitted the name and qualifications of an ICT specialist as required.

Given the above findings, we hold that the Respondent's disqualification of the Appellant's tender for the three grounds of Appeal to wit; the failure to comply with the experience, the construction management strategy and the key personnel requirements were proper and in accordance with regulations 210(1) and 213(1) and (2) of the Regulations. They read as follows: -

"r.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.

"r.213.- (1) Uamuzi wa taasisi nunuzi wa ukidhi wa zabuni utazingatia yaliyomo kwenye zabuni bila kutegemea ushahidi wa nje ya nyaraka zilizowasishwa.

(2) Pale ambapo zabuni haikidhi masharti ya nyaraka ya zabuni itakataliwa na taasisi nunuzi, na haitaweza kukidhi masharti kwa kufanyiwa marekebisho au kusahihishwa ukiukwaji huo."

(Emphasis supplied)

In regard to the Appellant's contention that it ought to have been invited for negotiations so as to rectify the noted anomalies in its tender, we find guidance in regulation 232 (5) of the Regulations that reads as follows;

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"r.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)

The provision requires negotiations to be conducted with the lowest evaluated tenderer. As the Appellant's tender was disqualified at the technical evaluation stage, its tender was not the lowest evaluated and therefore not eligible for negotiations.

We now deal with the Appellant's claim that the Respondent would have had saved TZS 214,000,000.00, had the former been awarded the Tender. According to regulation 219 (a) of the Regulations, a tenderer should be the lowest evaluated in case of goods, works or services, or the highest evaluated in case of revenue collection, but not necessarily the lowest or highest submitted price to be awarded a tender. It reads as follows: -

"r.219. Zabuni iliyoshinda itakuwa-

(a) zabuni yenye bei ya chini zaidi iliyofanyiwa tathmini ikiwa ni bidhaa, kazi za ujenzi au huduma, au bei ya juu zaidi ya zabuni iliyofanyiwa tathmini ikiwa ni ukusanyaji wa mapato, isipokuwa si lazima iwe bei ya chini zaidi au bei ya juu zaidi iliyowasilishwa, kwa kuzingatia kigezo cha ukomo wowote wa upendeleo utakaotumika".

(Emphasis supplied)



Based on the record of Appeal and the above provision of the law, we note that the Appellant was not the lowest evaluated tenderer as its tender was disqualified during the technical evaluation. Consequently, we agree with the Respondent's contention that the claim is irrelevant and we hereby reject it as being devoid of merit.

This position is buttressed by the case of ***E1 Limited versus Bank of Tanzania and Another*** (Supra), relied upon by the Respondent where the court had stated that value for money needs also to consider quality and delivery of the prescribed specifications and criteria provided by a procuring entity.

Given the above findings, we find the above grounds sufficient to dispose of this appeal and we need not belabor on the rest.

Having said all and done, 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 Appellant and in the absence of the Respondent though duly notified this 26th day of June 2025.

HON. JUDGE (rtd) AWADH BAWAZIR



.....
CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU.....

2. MR. RAPHAEL MAGANGA.....