

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 40 OF 2024 - 2025

BETWEEN

M/S ARIEL ALBERT TANCH

HOLDING COMPANY LIMITED.....APPELLANT

AND

DODOMA REGIONAL

REFERRAL HOSPITAL.....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. Albert Shuma | - Director |
| 2. Ms. Apaisaria Raymond | - Managing Director |



FOR THE RESPONDENT

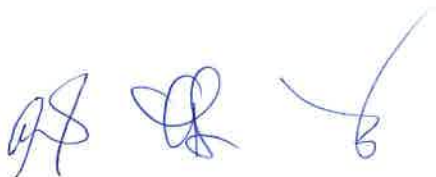
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|---------------------------|-----------------------------|
| 1. Mr. Ibenzi Ernest | - Medical Officer In charge |
| 2. Mr. Joel Sunny Kiluvia | - Health Secretary |
| 3. Ms. Elizabeth Luoga | - Supplies Officer |
| 4. Mr. Venatus Mukungu | - Supplies Officer |
| 5. Ms. Elizabeth Kifai | - Legal Officer |
| 6. Mr. Daudi Yesaya | - Procurement Officer |

This Appeal was lodged by **M/S Ariel Albert Tanch Holding Company Limited** (hereinafter referred to as "**the Appellant**") against the **Dodoma Regional Referral Hospital** (hereinafter referred to as "**the Respondent**"). It is in respect of Tender No. 52/004/2024/2025/NC/15 for Provision of Rental Services at the General Hospital Dodoma (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 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 March 2025, the Respondent through the National e-Procurement System of Tanzania (**NeST**) invited eligible tenderers to participate in



the said Tender. Three tenders, including that of the Appellant, were received by the Respondent within the 21st March 2025 deadline for receipt of tenders.

They were subjected to an evaluation process by the Evaluation Committee which recommended award of the Tender to M/S Maju Entertainment (the proposed successful tenderer) for a recommended contract price of Tanzania shillings Nine Million Six Hundred Thousand only (TZS. 9,600,000/-) VAT exclusive. On 16th April 2025, the Respondent negotiated with the proposed successful tenderer for an increase of the monthly contract price from TZS 800,000.00 to TZS 1,000,000.00 VAT exclusive. They finally agreed on a total annual contract price of TZS 12,000,000.00 exclusive of VAT.

On 3rd May 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 Maju Entertainment. Furthermore, the Notice stated that the Appellant's tender was found ineligible for award as it was not the lowest evaluated tenderer in terms of financial evaluation.

Dissatisfied with the reason given for its disqualification, on 6th May 2025, the Appellant applied for administrative review to the Respondent. The record of Appeal does not indicate whether the Respondent issued a decision with respect to the Appellant's application for review. Consequently, on 20th 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: -

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 Ms. Apaisaria Raymond, the Appellant's Managing Director, assisted by Mr. Albert Shuma, Director. Mr. Shuma commenced on the first issue by stating that the Appellant was one of the tenderers which participated in the Tender. The Tender opening record indicates that the Appellant quoted the highest price among all three tenderers which participated in the Tender. He stated that as the Tender was for revenue collection, it ought to have been awarded the contract for quoting the highest price.

Mr. Shuma further submitted that after completion of the evaluation process, the Respondent issued the Notice of Intention to award which stated that the Appellant's tender was not considered for award as it was not the lowest evaluated tenderer in terms of financial evaluation. Mr. Shuma argued that since the Tender was for revenue collection, award was to be made to the highest evaluated tenderer and not the lowest evaluated tenderer. Mr. Shuma contended further that upon being dissatisfied with the reason given for its disqualification, on 6th May 2025 the Appellant applied for administrative review to the Respondent which failed to issue a decision thereof. Thus, the Appellant filed this Appeal.



Mr. Shuma stated that in the reply to the Statement of Appeal, the Respondent showed that the Appellant's tender was disqualified for failure to comply with access to the financial resources criterion as it submitted an expired loan facility which was also irrelevant to the Tender. When responding to a question by a member, Mr. Shuma conceded that the submitted loan facility had expired but claimed that the same could be renewed. He was of the view, this anomaly could have been rectified if the Respondent informed the Appellant.

On her part, Ms. Apaisaria submitted that had the Respondent replied to the application for administrative review, the Appellant would not have filed this Appeal. That the Appellant filed this Appeal as the reason given for its disqualification contravened clause 31:1 of the Instructions to Tenderers **(ITT)**. The referred clause requires an award of the tender to be made to the highest evaluated tenderer and not the lowest evaluated tenderer. To the contrary, the Respondent intended to award the Tender to the lowest evaluated tenderer.

Ms. Apaisaria stated further that the Respondent's notice of Intention to award indicated that the Appellant's tender was disqualified for not being the lowest evaluated tenderer. Consequently, the Appellant challenges the Respondent's failure to provide a specific reason for its disqualification. She argued that the Respondent was required to state categorically the actual reason for the Appellant's disqualification. She finally submitted that the Respondent's concealment of the reason for the Appellant's disqualification raises doubt as to the legality of the Tender process.



In view of the above submission, the Appellant prayed the Appeals Authority to consider the tender opening report and clause 31:1 of the ITT in order to ascertain if the disqualification of the Appellant was justified.

REPLY BY THE RESPONDENT

The Respondent's reply submissions were made by Mr. David Yesaya, Procurement Officer from the Ministry of Health. He submitted that the evaluation process was done in three stages and adhered to the guidelines issued the Public Procurement Regulatory Authority (PPRA) and criteria provided in the Tender Document.

He stated further that during the evaluation stage, the Appellant was found to have not complied with the criterion of access to financial resources (sources of fund) which required tenderers to demonstrate sources of finance on meeting cash flow requirements of current and future contracts. The Respondent contended that the Appellant submitted an offer letter from the NMB Bank for a term loan facility which had a tenor of 12 months running from 3rd January 2023 in order to comply with the requirement of access to financial resources. However, the tenor of the said loan facility lapsed before the deadline for submission of tenders in question. Mr Yesaya pointed out that the loan facility was for purchase of ICT equipment which was irrelevant to the Tender under Appeal.

He conceded that the Notice of Intention to award did not state a specific reason for the Appellant's disqualification due to a system error which did not pick the correct reason for the Appellant's disqualification. In addition, he stated that being dissatisfied with the reason given for its



disqualification, the Appellant applied for administrative review to the Respondent. Mr. Yesaya further conceded that the Respondent did not issue a decision in respect of the filed complaint as it was not received within the specified time. This was due to technical challenges faced by the Respondent in using the NeST system to respond to the Appellant's complaint as well as filing a statement of reply to the Appeals Authority.

Mr. Yesaya averred that despite the wrong reason communicated by the system for the Appellant's disqualification and the Respondent's failure to entertain the Appellant's application for administrative review, these do not negate the fact that the Appellant's tender was fairly disqualified for failure to comply with the requirement for access to financial resources. And therefore, the Appellant's disqualification was justified.

Based on the above submission, the Respondent prayed to the Appeals Authority for the dismissal of the Appeal in its entirety and an order to proceed with the tender process.

REJOINDER BY THE APPELLANT

In its brief rejoinder Ms. Apaisaria submitted that there was no challenge in using NeST, as the system was working well on the Appellant's side. Thus, the Respondent could not have faced any challenge on its side. She stated further that the Respondent's act of issuing a different reason for the Appellant's disqualification raises doubt as to the authenticity of the whole Tender process. Hence, she urges the Appeals Authority to verify if the reason for the Appellant's disqualification contained in the Respondent's Statement of Reply was the same in the initial evaluation process.



ANALYSIS BY THE APPEALS AUTHORITY

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

In determining this issue, the Appeals Authority considered the parties' contentious arguments. The Appellant challenges the reason provided for its disqualification as not being the lowest evaluated tenderer in terms of financial evaluation. This reason contradicts, as the Tender under Appeal which is for revenue collection, an award was supposed to be made to the highest evaluated tenderer. It further contests the Respondent's provision of a different reason for its disqualification in the Notice of Intention to award which differed with the reason contained in the reply to the Statement of Appeal. The Appellant also disputes the Respondent's failure to entertain its application for administrative review.

On the other hand, the Respondent conceded that the Notice of Intention to award contained an incorrect reason for the Appellant's disqualification which differed with the findings in the evaluation report. The Respondent alleged that the anomaly was caused by a system error which picked a different reason for the Appellant's disqualification. The Respondent also conceded to have failed to entertain the Appellant's application for administrative review by claiming that it was seen beyond the stipulated time limit.

The Respondent contended that despite the anomaly in issuing the wrong reason for the Appellant's disqualification and its failure to entertain the Appellant's application for administrative review, the Appellant's tender was fairly disqualified for failure to comply with the access to financial resources



criterion. The Appellant submitted an expired term loan facility which was also not relevant to the Tender leading to disqualification of its tender.

In ascertaining the validity of the parties' arguments, we observed that the Notice of Intention to award indicated that the Appellant's tender was not considered for award as it was not the lowest evaluated tenderer in terms of financial evaluation. We further reviewed the evaluation report in NeST and observed that the Appellant's tender was disqualified at the technical evaluation stage for failure to comply with the access to financial resources requirement.

Regulation 238(2) and (3) of the Regulations reads as follows: -

"r.238(2) Baada ya uamuzi wa kutoa tuzo ya zabuni kwa mujibu wa kanuni ndogo ya (1), afisa masuuli atapaswa, kujiridhisha kwamba taratibu za ununuzi zimezingatiwa na ndani ya siku tatu, atatoa notisi ya kusudio la kuingia mkataba kwa wazabuni wote walioshiriki zabuni hiyo na kuwapa muda wa siku tano za kazi kuwasilisha malalamiko, kama yapo.

(3) Notisi iliyorejewa katika kanuni ndogo ya (2) itajumuisha-

- (a) jina la mzabuni mshindi;**
- (b) gharama za jumla za mkataba na muda wa ukamilishaji au uwasilishaji; na**
- (c) sababu za mzabuni kushindwa kulingana na taarifa ya tathmini".**

(Emphasis supplied)



The above provisions state clearly that after the accounting officer is satisfied that the tender process was conducted in accordance with the law, he is required to issue a notice of intention to award to all tenderers which had participated in the tender by giving them five working days to submit any complaint. The notice should include the name of the successful tenderer, contract sum, completion period and reasons for disqualification of tenderers as per the evaluation report.

In applying the above provisions to the facts of this Appeal, we observed that the reason for the Appellant's disqualification contained in the Notice of Intention to award differed with that in the evaluation report. The Notice of Intention to award specifies that the Appellant's tender was disqualified for not being the lowest evaluated tenderer in terms of financial evaluation while in variance, the evaluation report states that the Appellant's tender was disqualified for failure to comply with access to the financial resources criterion.

During the hearing the Respondent conceded to have communicated a wrong reason for the Appellant's disqualification and alleged that the anomaly was caused by a system error. However, the Respondent did not indicate whether it reported the alleged system error or malfunction to the PPRA. We reviewed the record of this Tender in NeST and noted that when issuing the Notice of Intention to award, the Respondent communicated the Notice with a default reason for disqualification instead of inserting the actual reason for the Appellant's disqualification. In view of this fact, we find the Respondent's act in this regard to have contravened regulation 238(3)(c) of the Regulations.



Next, we considered the Appellant's claim regarding the Respondent's failure to entertain its application for administrative review. We reviewed the record of Appeal and observed that being dissatisfied with the reason given for its disqualification, on 6th May 2025, the Appellant applied for administrative review to the Respondent through NeST as indicated in the Notice of Intention to award. During the hearing the Respondent conceded to have received the Appellant's complaint but did not entertain it.

Section 120(6) of the Act requires an accounting officer of a procuring entity, after receipt of a complaint from a tenderer, to issue its decision within five working days or seven working days if it forms an independent review team. It reads as follows: -

*"s. 120(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".

(Emphasis supplied)

In view of the above provision, we find the Respondent's failure to entertain the Appellant's application for administrative review to have contravened section 120(6) of the Act. However, we are of a further view that, much as the Respondent failed to entertain the Appellant's application for administrative review, the Appellant's rights were not prejudiced as



sections 120(8) and 121(2)(a) of the Act allows a tenderer to submit its complaint to the Appeals Authority if the procuring entity failed to issue its decision within the specified time limit. They read as follows: -

"s.120 (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)

In determining whether the Appellant's disqualification was justified, we reviewed the evaluation report and observed that the Appellant's tender was disqualified at the technical evaluation stage for failure to comply with access to financial resources requirement. We reviewed the Tender



Document and noted that the criterion on access to financial resources was provided under Section IV - Qualification and Evaluation Criteria, Item 3 – Financial Situation and Performance. It reads as follows: -

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

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

Average fund amount from all sources (any freely convertible currency proposed by bidder)	30,000,000"
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In substantiating whether the Appellant complied with the above criterion, we reviewed documents it submitted in NeST. We observed that under the access to financial resources requirement, the Appellant attached an Offer Letter for a Term Loan Facility from the NMB Bank which had a tenor of 12 months running from 3rd January 2023 to 2nd January 2024. The said loan facility was a working capital for financing a Local Purchase Order (LPO) for supplying ICT Equipment in various tenders which were expected to be won during the period.

During the hearing, we asked the Appellant to clarify if it complied with the requirement of access to financial resources. In response, the Appellant conceded to have attached the expired loan facility. However, it contended that the loan facility was renewable. And that the Respondent was required



to inform the Appellant about the expiry of the loan facility so that it could be renewed.

We reviewed regulation 213 of the Regulations which reads as follows: -

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

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

(Emphasis supplied)

The above provision states in clear terms that a procuring entity's determination of the responsiveness of a tender shall be based on the contents of the tender itself, without recourse to extrinsic evidence. And where a tender is not responsive to the requirements of the tender document, the procuring entity shall reject the same and it may not subsequently be made responsive by correction or withdrawal of the deviation.

We applied the above provision to the facts of this Appeal and find that the requirement to comply with access to financial resources was clearly provided in the Tender Document. The tenderers were required to demonstrate their ability to access adequate financial resources to meet the cash flow requirements of current and future contracts. The Appellant



conceded to have attached an expired loan facility for supply of ICT equipment. From the record of this Appeal, we are of the settled view that an expired loan facility for supply of ICT equipment attached to the Appellant's tender could not have proved the availability of adequate financial resources as required by the Tender Document.

In addition, we reject the Appellant's proposition that it could be consulted so as it could renew the expired loan facility. According to regulation 213 of the Regulations, evaluation of tenders has to be conducted on the contents of the tender itself, without recourse to extrinsic evidence or by withdrawing or correcting the deviation. Renewal of the loan agreement would amount to withdrawal of the deviation and recourse to extrinsic evidence.

Given the above findings, we are of the settled view that the Respondent's act of disqualifying the Appellant's tender for failure to comply with access to financial resources requirement was proper and in accordance with regulation 211 (2) (k) of the Regulations which reads as follows: -

"r.211 (2) Ukiukwaji ufuatao wa masharti ya msingi ya kibiashara, utahalalisha kukataliwa kwa zabuni:

(k) kushindwa kuwasilisha nyaraka muhimu zinazohitajika katika kubaini zabuni iliyokidhi vigezo kama ilivyoanishwa kwenye nyaraka za zabuni".

(Emphasis supplied)



The above provision states clearly that one of the reasons which may justify disqualification of a tenderer is failure to submit major supporting documents required by the tendering documents to determine substantial responsiveness of a tender. In this Tender, one of the requirements was a submission of a document which demonstrates a tenderer's access to financial resources. It is clear that the Appellant failed to submit a valid document. In this regard, such an anomaly justified the disqualification of its tender.

We further considered the Appellant's contention that the disqualification of its tender by the Respondent was contrary to the tender opening report and clause 31:1 of the ITT which requires award of the tender to be made to the highest evaluated tenderer. Clause 31:1 of the ITT reads as follows:-

"31:1 The Tender with the highest evaluated lease rent from among those which are eligible, compliant and substantially responsive shall be the highest evaluated Tender."

As per the record of Appeal, the Appellant's tender was disqualified during the technical evaluation stage. Thus, it did not reach the financial evaluation stage where its highest quoted price would have been compared to others.

Regulation 219 (a) of the Regulations requires a successful tender to be 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.



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 evaluation report and the above quoted provision of the law, we observe that the Appellant was not the highest evaluated tenderer as its tender was disqualified before price comparison. In view of the above, we reject the Appellant's contention that the disqualification of its tender was contrary to clause 31:1 of the ITT.

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

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

Taking cognizance of the above findings, we partly allow the Appeal to the extent that the Respondent erred in law for not communicating the actual reason for the Appellant's disqualification. The other grounds of Appeal are rejected based on the findings that the Appellant's tender was fairly disqualified. The Respondent is allowed to proceed with the tender process. 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 on this 19th day of June 2025.

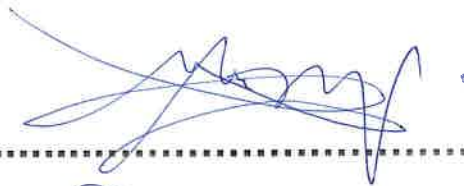
HON. JUDGE (rtd) AWADH BAWAZIR



.....
CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU.....



2. DR. GLADNESS SALEMA.....

