

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 43 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<br>and Human Resources |
| 3. Mr. Shafii Zuberi | - Accountant  |



## FOR THE RESPONDENT

- |                       |  |
|-----------------------|--|
| 1. Mr. Disth Japhet   | - Head of Procurement<br>Management Unit |
| 2. Mr. William Mambo  | - Legal Expert                           |
| 3. Mr. Joseph Paul    | - Senior Assistant Supplies<br>Officer   |
| 4. Mr. Atukuzwe Fungo | - Estate Officer                         |

This Appeal was lodged by **M/S Bogeta Engineering Limited** (hereinafter referred to as "**the Appellant**") against **Mbeya University of Science and Technology** known by its acronym **MUST** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. TR83/2024/2025/W/11 for the Proposed Rehabilitation and Upgrading of Mtwara Ufundi Teachers College to MUST Mtwara Campus College-Package 01 (hereinafter referred to as "**the Tender**").

From the 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 conducted using 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 24<sup>th</sup> March 2025, the Respondent through the National e-Procurement System of Tanzania (**NeST**) invited eligible tenderers to participate in

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the said Tender. Ten tenders, including the Appellant's, were received by the Respondent on 04<sup>th</sup> April 2025, which was the deadline for submission of tenders.

They were subjected to an evaluation process by the Evaluation Committee which recommended award of the Tender to M/S Kawishe Contractors Limited (**the proposed successful tenderer**) at the recommended contract price of Tanzania shillings Eight Hundred Thirteen Million Nine Hundred Fifty-Five Thousand Five Hundred only (TZS. 813,955,500/-) VAT exclusive for a completion period of 120 days. The record of Appeal indicates that the respondent's Tender Board approved the award as recommended at its meeting held on 16<sup>th</sup> May 2025.

On 20<sup>th</sup> May 2025, the Respondent issued a Notice of Intention to award which informed the Appellant that it intended to award the contract to the proposed successful tenderer. Furthermore, the Notice stated that the Appellant's tender was found ineligible for award due to the following reasons: -

- i) General and Specific Experience - the submitted projects did not range within the time specified in the Tender Document as only two (2) out of the three (3) submitted contracts complied with the specified requirements.
- ii) Construction Management Strategy - the submitted document did not align with the requirements specified in the Tender Document.



- iii) Mobilization Schedule - the submitted documents did not align with the Respondent's requirements.
- iv) Method Statement - the documents submitted did not align with the Respondent's requirements; and
- v) Key Personnel - the Appellant did not include an ICT Specialist as required.

Dissatisfied with the reasons given for its disqualification, on 20<sup>th</sup> May 2025 the Appellant applied for administrative review to the Respondent. On 24<sup>th</sup> May 2024 the Respondent issued its decision which rejected the Appellant's application for the review. Aggrieved further, on 30<sup>th</sup> 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 Eng. John Bogomba, the Managing Director.

He commenced his submissions on the first issue by stating that the Appellant was disqualified in the Tender under Appeal for failure to comply with five requirements, which are the grounds of this Appeal as expounded hereunder.



**Firstly,** Eng. Bogomba stated that the Appellant disputes its disqualification for failure to comply with the general and specific experiences as provided in the Tender Document. He stated that the Appellant's company had twenty-one (21) years of experience in the construction industry after being incorporated in 2004 and at the time of floating this Tender, it had has executed a total of thirty-six (36) projects which are significantly higher in value than the Respondent's project. It was his submission that the executed projects complied with the general and specific experience criteria required for this Tender.

Eng. Bogomba further submitted that in complying with the experience requirements, the Appellant submitted fourteen contracts of which three complied with the requirements of the Tender and were executed within the specified duration and had the required value. The said contracts were first, 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 between the Appellant and the Judiciary of Tanzania. Second, contract No. ME012/2018-19/HQ/W/40/Lot3 for Construction of Infrastructure for the Ministry of Agriculture at Mat Mubondo was executed from October 2021 to September 2022. The contract was between the Appellant and the Ministry of Agriculture and was executed from July 2021 to November 2022. The third Contract was No. CRDB/2020/W/01 for the proposed remodeling of the CRDB Bank at CRDB Meru Branch in Arusha between the Appellant and CRDB Bank and was executed from July 2020 to September 2021.

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He averred that had the Respondent's evaluators been competent, they would not have disqualified the Appellant's tender as all the contracts which demonstrated the Appellant's experiences were uploaded in NeST. Hence, the evaluators were bound to assess the contracts which complied with the Tender under Appeal. In view of this position Eng. Bogomba stated that the Appellant's disqualification on this ground was unjustified.

Secondly, the Appellant challenged its disqualification for failure to comply with the construction management strategy requirement. Eng. Bogomba submitted that both the Appellant and the Respondent had agreed that there were documents which were submitted in compliance with this criterion. However, the Respondent rejected the submitted documents for reasons that were not relevant to this criterion. He stated that the Appellant refuted the Respondent's findings because even if the attached documents were not relevant, the same could be revised before execution of the contract or alternatively, the Appellant could have been invited for negotiations. Thus, Eng. Bogomba contended that the disqualification of the Appellant's tender at this stage was not proper.

Thirdly, the Appellant challenged its disqualification for failure to comply with the mobilization schedule criterion. Eng. Bogomba stated that the mobilization schedule was submitted in accordance with the format provided by the Respondent in the NeST. Thus, it was not proper for the Respondent to disqualify the Appellant on this criterion.

Fourthly, the Appellant challenged its disqualification for failure to comply with the method statement requirement. Eng. Bogomba stated that the

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sample format for this criterion was provided in NeST. The Appellant submitted that the method statement was prepared in accordance with the format provided in the Tender Document. Surprisingly, the Respondent disqualified its tender while it had complied with the provided format.

It was his further submission that the method statement criterion was not among the mandatory requirements for 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. Thus, failure by the Appellant to comply with some of the criteria should not have led to its disqualification as its scores would not have been below the required minimum score points.

Fifthly, the Appellant disputed its disqualification for failure to include an ICT specialist on its tender as one of the key personnel. Eng. Bogomba submitted that the Tender Document required tenderers to submit four key personnel. These were an ICT specialist, a site technician, a project manager and an electrical engineer. In complying with this requirement, the Appellant submitted information of only three required key personnel. The Appellant conceded to have not submitted the name and details of an ICT specialist. However, he averred that such failure should not warrant a disqualification of a tenderer while three key personnel for the execution of the project were submitted. He argued that the Appellant could have been invited for negotiations and the minor anomalies could have been rectified.

He wound up his submissions by stating that the Respondent's act of disqualifying the Appellant's tender would lead the former to incur

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unnecessary costs. The amount saved would have been used to execute other projects if the Appellant's tender could be considered for award.

Based on the above submissions, he prayed for the following reliefs: -

- (i) Review of the Tender award process and award the contract to the Appellant; and
- (ii) Costs of the Appeal to the tune of TZS 5,600,000.00 be borne to the Respondent

### **REPLY BY THE RESPONDENT**

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

He commenced his submissions on the first ground of Appeal by insisting that the Appellant was fairly disqualified for failure to comply with the experience requirement. He stated that according to the Tender Document, tenderers were required to demonstrate their specific and general experiences by submitting three contracts executed from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2024, each with a value of not less than TZS 300,000,000.00. In complying with this requirement, the Appellant submitted several contracts. However, only two contracts were relevant to the requirements of the Tender and were within the stipulated period and had the required value.

Mr. Mambo disputed the Appellant's assertion that it had submitted three contracts which complied with requirements of the Tender. The third contract which the Appellant relied on was carried out between it and the





CRDB Bank. However, the contract start date does not fall within the duration specified in the Tender Document. The contract duration was to be from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2024. That the Appellant did not consider the start date but only considered the completion date which was contrary to the requirement provided in the Tender Document. He therefore submitted that the Appellant was fairly disqualified in this criterion.

On the second ground of Appeal which related to the construction management strategy criterion, Mr. Mambo submitted that the construction management schedule submitted by the Appellant was presented in bar chart as required by the Tender Document. The Appellant submitted a health and safety policy which was not required under this criterion. He contended that the document submitted by the Appellant did not indicate a construction schedule that would detail the time and resources needed for executing various tasks under the project. Thus, during the evaluation stage, the Appellant's tender was found to be non-responsive to this criterion.

In regard to the Appellant's assertion that its tender should not have been disqualified for failure to comply with construction management strategy as the document could be revised before signing of the contract or alternatively that the Appellant could be invited for negotiations so that it could clarify on the noted issues, Mr. Mambo responded that the Appellant was required to comply with the criteria provided in the Tender Document for it to be considered for award. Other propositions by the Appellant could

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not be implemented as they would be in contravention with the Tender Document and the governing law. Therefore, Mr. Mambo urged the Appeals Authority to disregard the Appellant's argument in this respect.

In response to the third ground of Appeal, Mr. Mambo submitted that tenderers were required to submit a mobilization schedule for personnel, equipment and materials. In complying with this requirement, the Appellant submitted a document which did not show how mobilization would be done. The Appellant alleged to have used the sample format provided in NeST. Mr. Mambo disputed such an assertion as the Appellant was an experienced contractor which could have submitted a proper mobilization schedule even if the provided sample was inappropriate. He contended that the Appellant was required to comply with the requirements provided in the Tender Document and not the issued sample.

On the fourth ground of Appeal alleging that the Appellant failed to comply with the Method Statement criterion, Mr. Mambo submitted that under this criterion tenderers were required to submit clear details on how works will be executed and completed in accordance with the proposed program. In response to this requirement, the Appellant provided a general statement which did not demonstrate how the works would be executed. Therefore, Mr. Mambo argued that the Appellant's disqualification on this criterion was justified.

In response to the fifth ground of Appeal that the Appellant failed to comply with the key personnel requirement, Mr. Mambo stated that tenderers were required to provide qualifications and adequate details of

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an ICT Specialist, a Project Manager/Site Engineer, an Electrical Engineer and a Site Technician as key personnel. He contended that the Appellant submitted qualifications and details of other key personnel except for the ICT Specialist. Mr. Mambo submitted that the Respondent's university is technology-based; and therefore, an ICT specialist was considered one of the key personnel, as the intended construction involves aspects related to technology.

Regarding 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. And since the Appellant was not the lowest evaluated tenderer, it could not be invited for negotiations as the Respondent would contravene Section 5 of the Act that requires tenders to be conducted in a manner which maximizes competition, transparency and fairness.

He submitted further that the Appellant's anomalies in this tender could not have been considered as a minor deviation since the Appellant failed to comply with the requirement provided in the Tender Document. He expounded further that if the Appellant's non compliance could be considered as a minor deviation, it would open up a pandora's box for tenderers to be non-compliant with requirements of tenders.

In support of his argument, he cited the case of Etiennes Hotel versus National Housing Corporation, Misc Civil Reference No. 32 of 2005, Court of Appeal of Tanzania, at Dar es Salaam where the Court held that in the case

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of two claimants who had anomalies the court would choose the lesser of the two evils.

In view of the above, Mr. Mambo concluded his submissions by stating that the Appellant was fairly disqualified from the Tender process as it failed to comply with the criteria provided in the Tender Document. Therefore, the Respondent's disqualification of the Appellant's tender was proper and in accordance with regulations 173, 210 and 211 of the Regulations.

Finally, the Respondent prayed for the dismissal of the Appeal and opposed the Appellant's prayer to be paid costs amounting to TZS 5,600,000 for failure to submit proper supporting evidence.

### **ANALYSIS BY THE APPEALS AUTHORITY**

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

Having heard the parties and considered their relevant submitted documents, we will now determine their contentions.

In the first ground of Appeal, the Appellant challenged its disqualification for failure to comply with the experience requirement. In its submissions, the Appellant contended to have complied with the general and specific experience requirements as provided in the Tender Document. On its part, the Respondent denied the Appellant's assertions by stating that the experience provided by the Appellant did not comply with the requirements provided in the Tender Document.



According to Item 1 of Section IV - Qualification and Evaluation Criteria, general and specific experience requirements are couched in the following terms: -

***"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, joint venture member, 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 the 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>	<b><i>Experience under Construction (Building) contracts in the Role as Prime Contractor.</i></b>
<i>Specific Experience Start Year</i>	<b><i>2021-01-01</i></b>
<i>Specific Experience End Year</i>	<b><i>2024-12-31</i></b>

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<i>Number Specific Experience Contracts</i>	<b>3</b>
<i>Value of each Specific Experience Contract in the specified tender currency</i>	<b>300,000,000"</b>

**"General Experience (SCORE: N/A)**

*Tenderer should provide details of their previous and ongoing contracts to evidence their general experience in construction*

<i>General experience start date</i>	<b>2021-01-01</b>
<i>General experience end date</i>	<b>2024-12-31</b>
<i>Number of Contract</i>	<b>3</b>
<i>Contract value in the specified currency</i>	<b>300,000,000"</b>

(Emphasis supplied)

The above provision states clearly that in complying with general and specific experience in construction, tenderers were required to attach 3 contracts executed from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2024 each with a value of not less than TZS 300,000,000.00.

We reviewed the Appellant's tender in the NeST and noted that under the specific and general experience slots, the Appellant had listed fourteen contracts, but only two complied with the tender requirements. The relevant contracts 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 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 ran from 26<sup>th</sup> October 2021 to 28<sup>th</sup> September 2022.

- ii) Contract No. ME012/2018-19/HQ/W/40/Lot3 for construction of infrastructure for the Ministry of Agriculture at Mat Mubondo between the Ministry of Agriculture and the Appellant with a value of TZS 559,417,945.00. The contract commencement date was from 10<sup>th</sup> July 2021 to 11<sup>th</sup> November 2022.

In view of the above facts, we are of the firm view that the Appellant failed to comply with the experience requirement as it had submitted only two contracts instead of three that were relevant to the requirements of the Tender.

We considered the Appellant's assertion that it had another contract with the CRDB bank, but after reviewing the referred contract, we found out that it was irrelevant to the Tender. The Contract No. CRDB/2020/10/10 was for the remodeling of the CRDB Bank at CRDB Meru Branch between the Appellant and CRDB Bank entered on 21<sup>st</sup> June 2020 and completed on 01<sup>st</sup> September 2021 with a value of TZS 341,000,000.00. The contract duration did not fall within the period specified in the Tender Document. Thus, the Appellant was fairly disqualified for failure to comply with the requirements provided in the Tender Document.

In the second ground of Appeal, the Appellant faults the Respondent's disqualification of its Tender on account of its failure to comply with the construction management strategy requirement. On the one hand, the

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Appellant claims to have complied with the said criterion while on the other hand, the Respondent opposes this assertion.

In substantiating whether the Appellant's disqualification under this category was proper, we reviewed Item 4 of Section IV - Qualification and Evaluation Criteria which provides guidance on the construction management strategy criterion that requires tenderers to submit a bar chart showing the construction time for each activity and the required resources. The provision reads as follows: -

***"Construction Management Strategy***

*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</i>
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We reviewed the Appellant's tender in NeST and observed that in complying with this requirement, the Appellant attached to its tender a Health and Safety Compliance Licence with Registration No. 214 102 507 issued by OSHA together with an Occupational Health and Safety Policy. The Appellant also attached a letter addressed to the Respondent which indicates its compliance with environmental matters that do not detail the time, a schedule or resources needed for execution of various tasks under the intended contract as stipulated in the Tender Document. Therefore, it

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is apparent that the Appellant failed to comply with the construction management strategy criterion.

In the fifth ground of Appeal, the Appellant disputed its disqualification for failure to submit an ICT specialist as one of the key personnel. It was the Appellant's view that much as an ICT specialist was not included on its list of key personnel, the said anomaly would not have led to its disqualification if the Appellant was invited for negotiations. On its part, the Respondent rejected the Appellant's proposition that its failure to submit an ICT specialist could have been rectified through negotiations as they are conducted with the lowest evaluated tenderer and the Appellant was not the one in this Tender.

We reviewed Item 3 of Section IV – Qualification and Evaluation Criteria which stated clearly that for this Tender the required key personnel were an ICT Specialist, a Project Manager/Site Engineer, an Electrical Engineer and a Site Technician. 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.*

<b><i>Categories of Key Personnel</i></b>	<b><i>Education Level</i></b>	<b><i>Experience of Key Personnel</i></b>	<b><i>Number of Required Key Personnel</i></b>
<i>ICT Specialists</i>	<i>Bachelor in ICT, Bachelor in Computer Science, Bachelor in Computer Engineering, Bachelor in</i>	<i>3 Years</i>	<i>1</i>



	<i>Telecommunication Engineering</i>		
<i>Site Technician</i>	<i>Diploma in Water Supply Engineering, Diploma in Plumbing Engineering</i>	<i>3 Years</i>	<i>1</i>
<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>

In substantiating whether the Appellant complied with the above criterion, we reviewed its tender in the NeST and noted that the Appellant submitted the names of John Kengere Bogomba as the project manager, Joseph Bareli Kuboja as the electrical mechanical engineer and John Joseph Kabuche as the site engineer. It did not submit the name of an ICT specialist.

In view of the above facts, we are of the settled view that the Appellant's disqualification for its failure to comply with the key personnel requirement was proper and justified.

Given the above observations, we find the Respondent's disqualification of the Appellant's tender for failure to comply with experience, construction management strategy and key personnel requirements to be proper and in



accordance with regulations 210(1) and 213(1) and (2) of the Regulations which 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 point out that regulation 232 (5) of the Regulations, requires negotiations to be conducted with the lowest evaluated tenderer. Since the Appellant's tender was disqualified at the technical evaluation stage, its tender could not have been considered as eligible for negotiations. The provision reads as follows:-

***"r.232 (5) Majadiliano yatafanyika kwa mzabuni mwenye zabuni yenye bei ya chini zaidi iliyofanyiwa tathmini***

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***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)

In response to the Appellant's assertion that the Respondent would have saved a substantial amount of money had the Tender been awarded to it, we find guidance in regulation 219 (a) of the Regulations which 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)

In terms of the above provision, for a tenderer to be awarded a tender, it should be 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.

Based on the evaluation report and the above provision of the law, we found that the Appellant was not the lowest evaluated tenderer as its



tender was disqualified during the technical evaluation stage. Therefore, its claim of saving a substantial amount lacks justification.

Given the above findings, we are of the view that these three grounds suffice to dispose of this Appeal as they clearly show that the Appellant was fairly disqualified. We shall not delve into the remaining grounds.

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?**

In view 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 26<sup>th</sup> day of June 2025.

**HON. JUDGE (rtd) AWADH BAWAZIR**



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. DR. WILLIAM KAZUNGU**.....  


**2. MR. RAPHAEL MAGANGA**.....  
