**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 09 OF 2025-2026**

**BETWEEN**

**M/S PREMIER MEDICAL CORPORATION**

**PRIVATE LIMITED.......................................................APPELLANT**

**AND**

**MEDICAL STORES DEPARTMENT...........................RESPONDENT**

**DECISION**

**CORAM**

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| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu | - Member |
| 3. Ms. Florentina Sumawe | - Member |
| 4. Mr. James Sando | - Secretary |

**SECRETARIAT**

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| 1. Ms. Florida Mapunda | - PALS Manager |
| 2. Ms. Agnes Sayi | - Principal Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |

**FOR THE APPELLANT**

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| 1. Mr. Ally Hamimu | - Country Representative |
| 2. Mr. Mashaka Ngole | - Advocate, Ngole & Associates Law Chamber |
| 3. Mr. Yahya Njama | - Advocate, YMN Law Office |

**FOR THE RESPONDENT**

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| 1. Mr. Omary Ngatanda | - State Attorney, Office of the Solicitor General (OSG) |
| 2. Ms. Catherine Kiiza | - State Attorney – OSG |
| 3. Mr. Brighton Mtugani | - Senior Legal Officer (MSD) |
| 4. Ms. Lightness Makundi | - Procurement Manager (MSD) |
| 5. Ms. Angela Mahinya | - Legal Officer (MSD) |
| 6. Mr. Hamis Mpinda | - Director of Procurement (MSD) |

This appeal filed by M/S Premier Medical Corporation Private Limited (hereinafter referred to as **"the appellant"**) against Medical Stores Department, abbreviated as "**MSD**" (hereinafter referred to as **"the respondent"**) pertains to tender No. FA/2024/2025/137/TR177/G/158 for the Supply of Malaria Rapid Diagnostic Kits from Manufacturers (hereinafter referred to as **"the tender"**).

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

The tender was done in accordance with the Restricted International Competitive Tendering Method as specified in the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as "**the Regulations**").

On 28th May 2025, the respondent invited eligible tenderers to participate in the tender through the National e-Procurement System of Tanzania (NeST). By the submission deadline, eight tenders, including that of the appellant, were received. After evaluation, the Evaluation

Committee recommended awarding the tender to M/S Abbott Rapid Dx International Limited (**"the proposed awardee"**) at a unit price of USD 6.5.

On 31st August 2025, the respondent issued a Notice of Intention to award, informing the appellant of its intention to award the contract to the proposed awardee. It stated that the appellant's tender was not considered as it was not the lowest evaluated tender during the financial evaluation stage.

Dissatisfied with the grounds for its disqualification, on 3rd September 2025, the appellant applied for administrative review to the respondent. However, the appellant contends that the respondent did not issue any decision. Consequently, it filed this appeal with the Appeals Authority on 17th September 2025.

In its statement of reply, the respondent raised a Preliminary Objection (PO) on the following grounds:-

i. The appeal is legally unsound since the appellant was partially granted relief during the administrative review, indicating there are no grounds for appeal.
ii. The appeal is premature and speculative as the tender process has not yet concluded and a lawful re - evaluation is underway. Thus, the appellant's appeal is based on speculative prejudice, contrary to the spirit of the procurement dispute resolution under Part XI of the Act.
iii. The appeal is legally flawed, as the appellant is effectively seeking a specific award in its favor, which contradicts the principles of the

procurement law that entitles bidders only to a fair, lawful and transparent process rather than an automatic award.

Therefore, the respondent prayed for the dismissal of the appeal with costs.

When the matter was called on for hearing and before the issues for determination were framed, we inquired whether the appellant still wished to proceed with the appeal. The appellant claimed it had not officially received the respondent's decision on its application for administrative review, which it had later obtained from the Appeals Authority upon request. The appellant explained that the decision was sent to an incorrect email address vnkrani@premiermedcorp.com instead of the designated address provided in the NeST thus matt@premiermedcorp.com. Consequently, the appellant insisted on proceeding with the appeal.

Opposing this contention, the respondent asserted that the appellant's application for administrative review was partially upheld, as the notice of intention to award the tender to the proposed awardee was revoked, which was the primary relief sought by the appellant. Following this revocation, the respondent lawfully directed that the tender be re-evaluated to identify the lowest evaluated tenderer, emphasizing that a direct award to the next lowest tenderer is not permissible, as the tender must be awarded to the lowest evaluated tenderer rather than simply the lowest quoted price.

We clarified to the parties the requirements of Section 121(2) (a) of the Act, which stipulates that a tenderer must file a complaint directly to the Appeals Authority where an accounting officer fails to issue a decision within five working days of receiving a tenderer complaint, provided that the complaint is filed to the Appeals Authority within that timeframe. Given these legal requirements, the appellant filed this appeal after the respondent failed to issue a decision within the prescribed period.

As a result, the respondent prayed for withdrawal of the Preliminary Objection raised, a prayer to which the appellant agreed.

Thereafter, the principal contention between the parties remained the respondent's order to re-evaluate the tender. The appellant argued that re-evaluation was unnecessary, as several tenderers had reached the financial evaluation stage, and the respondent should proceed with awarding the tender to the next lowest evaluated tenderer whilst the respondent maintained it was necessary.

Based on those rival arguments between the parties, the following issues were framed namely: -

**1.0 Whether the respondent's decision to order re-evaluation of the tender was justified;** and

**2.0 What reliefs, if any, are the parties entitled to?**

## SUBMISSIONS BY THE APPELLANT

The appellant's submissions were made by Mr. Yahya Njama, learned advocate. He began by stating that the appellant was one of the tenderers that participated in the tender process. On 31st August 2025, the appellant received a Notice of intention to award, indicating that its tender was not considered because it was not the lowest evaluated tender during the financial evaluation stage. Dissatisfied with this determination, the appellant applied for an administrative review. Mr. Njama noted that the respondent did not issue any decision within the required timeframe, which led to this appeal.

Mr. Njama went on to argue that the respondent's revocation of the intention to award the tender to the proposed awardee and the subsequent directive for re-evaluation was unnecessary. He was of the view that there was no need for re-evaluation since several tenderers had already reached the financial evaluation stage. He further stated that, after the revocation of the award to the proposed awardee, the respondent should award the tender to the next lowest evaluated tenderer rather than reverting to the initial evaluation stage.

Mr. Njama elaborated that the respondent's decision to conduct a re-evaluation was improper given the stage reached in the tender process. He explained that the initial evaluation had already been conducted, resulting in the award of the tender to M/s Sirini Diagnostics. Following a complaint lodged by the proposed awardee, the respondent revoked this award and proceeded with a re-evaluation, which led to the tender being awarded to the proposed awardee. The appellant, dissatisfied with this award, filed a complaint that was reviewed, resulting in the revocation of the award to the second proposed awardee. Now, the respondent seeks to conduct a third evaluation of the same tender.

Mr. Njama further argued that the respondent's revocation of the award to M/s Sirini Diagnostics after the first re-evaluation indicates that the proper process was followed to ensure all tenderers complied with the tender document's requirements. Therefore, requesting a third evaluation under the same conditions would amount to wastage of time and cause unnecessary losses for both the Government and the tenderers.

He asserted that at this stage, the respondent should have awarded the tender to the next lowest evaluated tenderer instead of returning to the re-evaluation process. He cited section 69(1) of the Act to support his argument, which stipulates that an award must be made to the successful tender. Since both the first and second lowest evaluated tenderers were found to be non-compliant with the tender document's requirements, the respondent should award the tender to the third lowest evaluated tenderer rather than re-evaluating the tender. He argued that to ensure fairness and equality, the respondent is required under Regulation 231 to conduct a post-qualification exercise to the next lowest evaluated tenderer to verify its legal and financial capability to execute the contract.

In conclusion, the appellant prayed that the respondent be ordered to act lawfully and proceed to award the tender to the lowest evaluated tenderer.

## REPLY BY THE RESPONDENT

The respondent's submission was made by learned State Attorneys, Mr. Omary Ngatanda and Catherine Kiiza, both from the Office of the Solicitor General (OSG), assisted by Ms. Angela Mahinya, the respondent's Legal Officer and Mr. Hamis Mpinda, the respondent's Director of Procurement.

Mr. Ngatanda asserted that the respondent fully complied with section 120(6) of the Act, and regulations 108 and 109 of the Regulations. He stated that the application for administrative review was received on 3rd September 2025, and the accounting officer's decision was issued on 10th September 2025, well within the five prescribed working days. The decision was shared through the NeST platform, and due to NeST experiencing challenges, it was further communicated via email to all tenderers on 11th September 2025.

The learned State Attorney further submitted that the appellant's application for administrative review was upheld, as the respondent revoked its intention to award the tender to the proposed awardee, which was the primary relief sought by the appellant. However, the respondent could not proceed to award the tender to the appellant, who was the next lowest evaluated tenderer, because the law mandates that awards must be made to the lowest evaluated tenderer, not merely the lowest quoted price.

The learned State Attorney elaborated further that the respondent exercised its powers under section 120(6)(b) of the Act by ordering re-evaluation of the tender. He noted that the law is silent on specific measures to be taken when reviewing an application for administrative review. He said the purpose of ordering re-evaluation of the tender is to ensure that all tenderers comply with the criteria set forth in the tender document and to prevent any potential disputes or irregularities that may arise in future.

Furthermore, Ms. Mahinya explained that the re-evaluation aimed to verify whether the proposed awardee met the requirements of the tender document. She mentioned that in the year 2021, the respondent received a public notice issued by M/S Abbott Diagnostics Korea Inc, a company duly listed with the WHO and registered with the TMDA, authorizing the proposed awardee to act on its behalf. When quarried on whether the said document was uploaded in NeST, She replied that the proposed awardee failed to upload it.

Mr. Mpinda added that the decision to re-evaluate the tender was also influenced by budget constraints, noting that the proposed awardee quoted a unit price of USD 6.5, whereas the appellant quoted USD 6.75, which exceeded the available budgetary allocation. Consequently, the respondent deemed it necessary to conduct a re-evaluation to ensure full compliance with the prescribed evaluation criteria before entering into negotiations. Furthermore, regulation 231 of the Regulations mandates the verification of a tenderer's qualifications to confirm their legal capacity and adequacy of resources to fulfill contractual obligations.

In conclusion, the respondent prayed for the following orders: -

i. Dismissal of the appeal for lack of merit.

ii. Re- affirmation of the Accounting Officer's decision to revoke the intention to award and direct a re - evaluation of the tender.

iii. Any other relief the Appeals Authority deems just and proper to grant.

## REJOINDER BY THE APPELLANT

In his brief rejoinder, Mr. Njama contended that conducting a re-evaluation of the tender constitutes an abuse of the procurement process and contradicts the principles of fairness and finality in public procurement. He further argued that such action has detrimental implications for the national economy and imposes undue prejudice on the tenderers.

He also asserted that, having already identified deficiencies in the proposed awardee, the respondent lacked justification for reinstating that tenderer into the re-evaluation process. The appellant argued that this action is unjustified and contrary to the tender requirements, given that the proposed awardee is not registered or listed with the WHO and TMDA as expressly required in the tender document.

He argued that the respondent failed to provide strong and substantial reasons for undertaking the re-evaluation and has not demonstrated any specific challenges regarding the second lowest evaluated tenderer during the re-evaluation process, other than a mere presumption that such challenges might exist. Considering this, the appellant respectfully requested that the tender be awarded to the second lowest evaluated tenderer, subject to post-qualification verification. It was his view that this approach would help reduce costs associated with the procurement process.

## ANALYSIS OF THE ISSUES

### 1.0 Whether the respondent's decision to order re-evaluation of the tender was justified.

On the one hand, the appellant challenges the respondent's decision to re-evaluate the tender, asserting that instead of conducting a re-evaluation, the respondent ought to have awarded the tender to the next lowest evaluated tenderer. On the other hand, the respondent maintains that the re-evaluation was necessary to determine whether the proposed awardee met the requirements of being listed by the WHO and registered with the TMDA. Additionally, the respondent aimed to ascertain whether the other remaining tenderers complied with the criteria outlined in the tender document.

We reviewed the record of appeal and noted that the respondent initially evaluated the tender and proposed an award to M/S Sirini Diagnostics. Following this award, the proposed awardee, who was the second lowest evaluated tenderer during the initial evaluation, lodged a complaint with the respondent. In response, the respondent revoked the award and re-evaluated the tender, resulting in awarding the tender to the proposed awardee. This led the appellant to lodge a complaint, contending that the proposed awardee failed to meet the requirements of being listed by the WHO and registered with the TMDA as specified in the tender document.

Upon review of the WHO and TMDA prequalified lists, the respondent ascertained that the proposed awardee was not listed; instead, M/S Abbott Diagnostics Korea Inc., was the entity listed by the WHO and registered with the TMDA. Following this observation, the respondent revoked the award and ordered a re-evaluation of the tender.

We examined section 87 (1) of the Act read together with regulation 213 of the Regulations which read as follows: -

> *"s.87 (1) The basis for tender evaluation and selection of the successful tenderer shall be clearly specified in the tender document.*
>
> *r.213 (1) The procuring entity's determination of a tender's responsiveness shall be based on the contents of the tender itself without recourse to **extrinsic evidence**.*
>
> *(2) Where a tender is not responsive to the tender document, it shall be rejected by the procuring entity and **may not subsequently be made responsive by correction or withdrawal of that deviation.**"*

(Emphasis made)

The above provisions state that a procuring entity's determination of a tender's responsiveness must be based exclusively on the contents of the tender itself, without recourse to extrinsic evidence. If a tender does not meet the requirements of the tender document, the procuring entity must reject it, and it cannot be made responsive through correction or withdrawal of the deviation.

Applying these legal requirements to the facts of this appeal, we find that the proposed awardee's tender was non-responsive, as the proposed awardee was neither listed by the WHO nor registered with the TMDA, contrary to the stipulations in the tender document. During the hearing, the respondent stated that it ordered re-evaluation upon learning that the proposed awardee had been authorised by M/S Abbott Diagnostics Korea Inc. to act on its behalf, based on a public notice released in 2021. We queried why the proposed awardee did not submit records of such authorization if it existed. It was the respondent's reply that this was the reason for ordering a re-evaluation to ascertain the status of the proposed awardee and the other remaining tenderers.

We find the respondent's assertion to be unfounded, as it had already conducted two evaluations based on the same criterion of requiring tenderers to be listed by WHO and registered with the TMDA. Given these circumstances, we would have expected the respondent to have addressed and re-evaluated this criterion during the second evaluation, rather than initiating a third evaluation on the same issue.

Furthermore, if the respondent was aware that the proposed awardee had been authorized by M/S Abbott Diagnostics Korea Inc. to participate in the tender, there was no justification for nullifying the award while in possession of such information. The respondent was required to evaluate the tender based on the criteria outlined in the tender document. We state that, at this juncture, the respondent is barred by law to consider any document other than those duly submitted by the tenderers at the time of the tender opening which were evaluated during the two prior evaluations. Therefore, the respondent's decision to order a third evaluation of the tender on the same criteria to determine whether the proposed awardee complied with WHO and TMDA registration requirements would constitute an imprudent use of time and public resources, resulting in unwarranted delay in executing the tender.

We therefore concur with the appellant that the respondent should proceed with awarding the tender to the next lowest evaluated tenderer and, if necessary, conduct a post-qualification and negotiate with it.

Consequently, we find the respondent's decision to order a re-evaluation of the tender to be improper and in violation of section 87 (1) of the Act, in conjunction with regulation 213 of the Regulations.

Given this position, we conclude the first issue in the negative that the respondent's decision of ordering re-evaluation of the tender was not justified.

In obiter, we note that the appellant's profile in the NeST system, along with the tender submitted to the respondent, did not include the email address vnkrani@premiermedcorp.com. Instead, the email address provided was matt@premiermedcorp.com. A similar issue regarding an incorrect email address previously arose in Tender No. IE-009/2021/2022/HQ/G/006A for Supply of HIV Laboratory Reagents and Supplies under Framework Agreement Lot 3, culminating in PPAA Appeal Case No. 7 of 2022/2023 between the appellant and the respondent, where it was found that the respondent had utilized an incorrect email address. This recurrence demonstrates a lack of due diligence on the part of the respondent in fulfilling its official duties. Accordingly, the respondent is advised to ensure that all communications are made strictly through the contact details provided in the tender documents to avert unnecessary and unwarranted complaints in future.

**2.0 What reliefs, if any, are the parties entitled to?**

Considering the findings above, we hereby allow the appeal and order the respondent to award the tender to the next lowest evaluated tenderer in accordance with the law. We make no order regarding costs.

It is so ordered.

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

The Right of Judicial Review, as outlined in section 125 of the Act has been explained to the parties.

This decision is delivered in the presence of the parties on this 13th day of October 2025.

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

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**CHAIRPERSON**

**MEMBERS: -**

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

2. **MS. FLORENTINA SUMAWE**..................................................