

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 25 OF 2025-26**

**BETWEEN**

**M/S HERCHIE INVESTMENT LIMITED ..... APPELLANT**

**AND**

**PRIME MINISTER'S OFFICE  
LABOUR, YOUTH, EMPLOYMENT AND  
PERSONS WITH DISABILITY ..... RESPONDENT**

**DECISION**

**CORAM**

- |                                   |               |
|-----------------------------------|---------------|
| 1. Hon. (rtd) Judge 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. Ms. Shellida Edward    | - Advocate, SEM Advocates |
| 2. Mr. Anael Martin Masai | - Marketing Officer       |



3. Ms. Hellen Haule - Managing Director
4. Mr. James Marco - Manager

### **FOR THE RESPONDENT**

1. Mr. Dismass Mwakisambwe - Director of Procurement  
Management Unit
2. Ms. Happyness Mutalemwa - Ag. Director of Legal  
Services
1. Mr. Charles Swai - Legal Officer
2. Mr. David Ndimu - Legal Officer
3. Mr. Haji Uyaga - Procurement Officer
4. Mr. Roma Mtawa - Senior Procurement Officer

This appeal, lodged by **M/S Herchie Investment Limited** (hereinafter referred to as "**the appellant**") against the **Prime Minister's Office Labour, Youth, Employment and Persons with Disability** (hereinafter referred to as "**the respondent**") concerns Tender No. 65/2025/2026/NC/01 for Provision of Food and Refreshments (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 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 15<sup>th</sup> August 2025, the respondent, through the National e-Procurement System of Tanzania (**NeST**), invited eligible pre-qualified tenderers to participate in the tender, setting the submission deadline on 27<sup>th</sup> January 2026. By the deadline, eight tenders, including that of the appellant, were received and subjected to evaluation. Subsequently, award was proposed to M/s Abbys Catering Services (**"the proposed awardee"**).

On 05<sup>th</sup> February 2026, the respondent through NeST issued a Notice of Intention to award informing the appellant of its intention to award the tender to the proposed awardee at a contract price of TZS 300,000,000.00 (Three Hundred Million), exclusive of VAT, with a completion period of 365 days. The Notice further stated that the appellant's tender was not considered for award because it was not the lowest evaluated tender at the financial evaluation stage.

Dissatisfied with the reason given for its disqualification, the appellant applied for administrative review to the respondent on 09<sup>th</sup> February 2026. There is no record indicating whether the respondent addressed this application. Further aggrieved, the appellant lodged the present appeal before the Appeals Authority on 22<sup>nd</sup> February 2026.

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

**1. Whether the disqualification of the appellant's tender was justified; and**



## **2. What reliefs, if any, are the parties entitled to?**

### **SUBMISSIONS BY THE APPELLANT**

The appellant's submissions were made by Ms. Shellida Edward, learned advocate. Addressing the first issue, she stated that the appellant participated in the tender and complied with all requirements set out in the tender document. The appellant's quoted price for this tender was TZS 299,400,000.00.

Ms. Shellida submitted that on 5<sup>th</sup> February 2026, the appellant received a Notice of Intention to Award through NeST. The Notice stated that the appellant's tender was disqualified for not being the lowest evaluated tender at the financial evaluation stage. It further stated that the award was recommended to the proposed awardee at a contract price of TZS 300,000,000.00. She argued that the appellant was aggrieved by the respondent's decision intending to award the tender to a higher-priced tenderer despite the appellant's lower quoted price of TZS 299,400,000.00. Consequently, the appellant applied for administrative review and then filed this appeal.

Ms. Shellida referred the Appeals Authority to clauses 37.1, 38.2, and 39.1 of the Instructions to Tenderers (ITT), which provide guidance on determining the lowest evaluated tenderer. She emphasized that for a tender to be considered the lowest evaluated price, it must comply with all eligibility and technical requirements specified in the tender document.



She argued that since the notice of intention to award indicated the disqualification was based on not being the lowest financial tender, it implies that the appellant passed the eligibility and technical evaluation stages. Given that the appellant's quoted price of TZS 299,400,000.00 was lower than of the proposed awardee's of TZS 300,000,000.00, the appellant's tender should have been considered for award as it was the lowest evaluated tender.

Ms. Shellida further submitted that section 53(4) of the Act requires that evaluation criteria be made known and applied equally to all tenderers to prohibit discrimination. Since the appellant qualified in the earlier evaluation stages, it was improper and unjustifiable for the respondent to propose awarding the tender to a higher-priced tenderer during financial evaluation. She submitted that the respondent's conduct contravened clauses 37.1, 38.2, and 39.1 of the ITT and section 53(4) of the Act.

Ms. Shellida added that after receiving the Notice of Intention to award, the appellant timely applied for administrative review, but the respondent failed to respond as required by law. Ms. Shellida argued that this failure breached the respondent's legal obligations under the Act, the Regulation and violated principles of fairness, transparency, accountability and administrative justice.

She submitted that upon filing this appeal on 22<sup>nd</sup> February 2026, the appellant received a Statement of Reply from the respondent on 24<sup>th</sup> February 2026 through NeST. It introduced a new ground for disqualification stating that the appellant failed to specify the supervisors



and attach their Curriculum Vitae (CVs) as required by the tender document.

She argued that the issuance of two different reasons for disqualification prejudiced the appellant's rights in this tender process and requested the Appeals Authority to review the matter and rule in the appellant's favour.

While the appellant believed that it complied with the requirements by reaching the financial evaluation stage, a review of its submission in NeST during the hearing revealed that it did not specify the supervisor nor attach the supervisor's CV as required. Ms. Shellida argued that although the supervisor was not explicitly identified, a person designated as a chef cook could fulfill the supervisory role, and the respondent should have sought clarification instead of disqualifying the appellant.

Ms. Shellida concluded by praying for the following orders: -

- i) A declaration that the respondent acted unlawfully by failing to respond to the appellant's complaint within the prescribed time.
- ii) A declaration that the financial evaluation was irregular, unfair, and inconsistent with the tender opening report, which shows that the appellant submitted a lower bid price than the proposed awardee.
- iii) The respondent be ordered to disclose full financial evaluation report, including scoring sheets and comparative price analysis.
- iv) Suspension of the implementation of the intended award pending determination of this appeal.
- v) A fresh, transparent and lawful financial re-evaluation of all responsive tenders be carried out by the respondent.

Two handwritten signatures in blue ink are located at the bottom of the page. The first signature is on the left and the second is on the right, both appearing to be initials or names written in a cursive style.

- vi) Nullification and setting aside of the Notice of Intention to award the contract to the proposed awardee if found to be based on improper evaluation.
- vii) The respondent be directed to reconsider the appellant's tender in accordance with the lowest evaluated responsive bid principle.
- viii) The respondent be ordered to award the tender to the appellant if found to be the lowest evaluated tenderer.
- ix) Award for compensation of costs and losses incurred by the appellant.

### **REPLY BY THE RESPONDENT**

The Respondent's submissions were made by Mr. Charles Swai, Legal Officer and Mr. Roma Mtawa, Senior Procurement Officer. Mr. Mtawa acknowledged that, according to the tender opening report, the appellant's quoted price was lower than that of the proposed awardee. However, he emphasized that tender award is not based solely on the lowest price, other eligibility and technical requirements must be met prior to price consideration.

Mr. Mtawa explained that the tender submission deadline was 27<sup>th</sup> January 2026, with eight tenders received. These tenders were opened and evaluated in accordance with the Act, Regulations and the tender document requirements. The evaluation process comprised of three stages: preliminary, technical and financial evaluation.

He stated that during the technical evaluation, the appellant's tender was found non-responsive due to failure to comply with the key personnel requirement, specifically for not identifying the supervisor or submitting the



supervisor's CV. Mr. Mtawa submitted that according to the key personnel requirement provided in the tender document, tenderers were required to identify the supervisor and attach his/her CV to enable the respondent to assess qualifications and capacity to coordinate the project, which involved five different stations. Since the appellant did not meet this requirement, its tender was disqualified for being non-responsive. Thus, Mr. Mtawa argued that this disqualification was justified.

In response to the appellant's contention that the respondent raised a new reason for disqualification in the statement of reply different from the reason stated in the Notice of Intention to Award, Mr. Mtawa clarified that the respondent did not issue contradictory reasons. He said the Notice of Intention to Award contained a general reason, stating that the appellant was not the lowest evaluated tenderer at the financial evaluation stage. But the Statement of Reply clarified that the appellant failed to comply with the key personnel requirements.

When the Appeals Authority requested clarification on the actual reason for the disqualification, Mr. Mtawa confirmed that the evaluation report clearly indicated that the appellant was disqualified for failing to both identifying a supervisor or submitting the required CV. He admitted that the Notice of Intention to Award did not specify the actual reason for disqualification.

Regarding the appellant's reference to clauses 37.1, 38.2, and 39.1 of the ITT and section 53 (4) of the Act, Mr. Swai, submitted that price was not the sole factor in determining a responsive tender. The tender document stipulated several requirements that tenderers had to meet before price

Two handwritten signatures in blue ink are located at the bottom of the page. The signature on the left is a stylized, cursive 'AS'. The signature on the right is more complex, appearing to be 'L. [unclear]'.

evaluation. Since the appellant's tender was disqualified at the technical evaluation stage, its price was not considered. Therefore, the appellant's contention on this point is unfounded and should be disregarded.

In regard to the respondent's failure to respond to the appellant's application for administrative review, Mr. Swai explained that the respondent's Accounting Officer did not receive any notification from NeST indicating the appellant's complaint. Consequently, the respondent was unaware of the complaint and could not respond.

During the hearing the respondent clarified that the required supervisors were five for the five stations in the project. Additionally, the respondent stated that the proposed awardee identified only one supervisor with four other staff and was considered responsive.

Concerning the appellant's prayed reliefs, Mr. Swai argued that they should be rejected because the appellant was fairly disqualified for failure to comply with the key personnel requirement. He noted that even if a re-evaluation order were issued, the appellant would remain non-responsive due to the key personnel issue and therefore could not be recommended for award. He prayed that all reliefs sought be disregarded and the appeal be dismissed with costs.

### **REJOINDER BY THE APPELLANT**

In her brief rejoinder, Ms. Shellida submitted that the appeal was filed due to the respondent's failure to provide the correct reason for its disqualification. She argued that if the respondent had clearly stated in the Notice of Intention to Award that the appellant's tender was disqualified for

Handwritten signatures and initials in blue ink, including a stylized signature on the left, a checkmark in the middle, and another signature on the right.

failure to meet the key personnel requirement, the appellant might not have pursued the appeal. The issuance of two different reasons casts doubt on the respondent's conduct in the tender process.

She further contended that the key personnel requirement provided in the Tender Document uses the term "shall," making compliance mandatory. According to the respondent's submissions, the proposed awardee has identified only one supervisor instead of the required five. Therefore, the proposed awardee also failed to comply with the key personnel requirement and should be disqualified for non-compliance. Consequently, the award to the proposed successful tenderer is unjustified.

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

#### **1. Whether the disqualification of the appellant's tender was justified**

The Appeals Authority examined the rival arguments made by the parties on the appellant's disqualification. The appellant contended that according to the Notice of Intention to Award, its tender was disqualified solely for not being the lowest evaluated tenderer at the financial evaluation stage. The appellant contended that this reason was insufficient and unjustified, leading it to lodge an application for administrative review with the respondent. When no decision was rendered, the appellant proceeded to file the present appeal.

Further, the appellant argued that in the respondent's reply to this appeal, a new reason for its disqualification was introduced - failure to comply with the key personnel requirement, specifically for not identifying the



supervisor and submitting the required CV. Since this ground was not disclosed in the Notice of Intention to Award, the appellant urged the Appeals Authority to disregard it and find that the appellant was eligible for the tender award.

Conversely, the respondent maintained that the appellant was properly disqualified for failing to meet the key personnel requirement by not indicating the supervisor and providing the requisite CV. The respondent explained that the reason stated in the Notice of Intention to Award was general, while the specific ground was clarified in reply to this appeal.

Given these conflicting positions, the Appeals Authority found it necessary to establish the actual reason for the appellant's disqualification before determining whether it was justified.

Upon reviewing the record of appeal, we noted that the Notice of Intention to Award indicates that the appellant's tender was disqualified for not being the lowest evaluated tenderer at the financial evaluation stage. However, the respondent's Statement of Reply specified that the disqualification was due to the appellant's failure to identify the supervisor and submit the required CV as per the key personnel criterion.

Further examination of the evaluation report revealed that eight tenders were submitted for this tender. The report confirmed that the appellant's tender was disqualified at the technical evaluation stage for failure to specify the supervisor and submit the CV as required and it was therefore not subjected to further evaluation.

Handwritten signature on the left, followed by a blue arrow pointing to a second, more complex handwritten signature on the right.

Based on these facts, it is clear that the appellant's tender was disqualified for failure to specify the supervisor and submit the required CV.

We then reviewed regulation 238(3) of the Regulations which reads as follows: -

*"r.238 (3) The notice referred to in sub regulation (2) shall contain-*

- (a) the name of the successful tenderer;*
- (b) the total contract cost and the completion or delivery time; and*
- (c) **the reasons for the unsuccessful tenderer's failure according to the evaluation report.**"*

(Emphasis added)

This provision requires a procuring entity when issuing a notice of intention to award, to inform tenderers the name of the successful tenderer, the contract amount, the completion period and the reasons for the unsuccessful tenderer's failure as detailed in the evaluation report.

Applying this legal requirement to the facts of this appeal, we find that the Notice of Intention to Award included the name of the successful tenderer, the contract amount and the completion period. However, it did not specify the actual reason for the appellant's disqualification as set out in the evaluation report. The evaluation report clearly states that the appellant's tender was disqualified at the technical evaluation stage for failure to specify the name of the supervisor and submit the required CV.



Given this observation, we find that the respondent's issuance of the Notice of Intention to Award, which omitted the actual reason for the appellant's disqualification, contravened regulation 238(3)(c) of the Regulations.

In light of the foregoing, we conclude that the actual reason for the appellant's disqualification was failure to specify the name of the supervisor and submit the required CV. Having established this, we now proceed to determine whether the appellant's disqualification on this ground was justified.

We reviewed Item 4 of Technical Evaluation under Section IV - Evaluation and Qualification Criteria in the tender document which provides the requirement relating to Key Personnel. The provision reads as follows: -

*"Key Personnel (SCORE: Comply/Not Comply to specified minimum requirements) Tenderer should provide details of their personnel with adequate qualifications as required by the procuring entity.*

<b>Categories of Key Personnel</b>	<b>Supervisor</b>
<b>Education Level</b>	<b>Form Four</b>
<b>Experience of Key Personnel</b>	<b>3 year experience on the same field</b>
<b>Number of Required Key Personnel</b>	<b>5"</b>



The provision required tenderers to provide details of their key personnel by specifying five supervisors, level of education and the required experience.

To determine whether the appellant complied with the key personnel criterion, we reviewed its tender submitted through NeST and observed that in the slot where tenderers were required to provide details of personnel with adequate qualifications, the appellant listed six proposed personnel: Charles Geoffrey Kalungu (server), Janeth William Millanzi (food server), Sakina Musa Fadhili (chef), Emmanuela Aidan Gwaka (chef), Willbert Christopher Komba (chef cook) and Anael Martin Masasi (food server). For each individual, the appellant provided information including their name, role in the project (position), education qualifications, duration of appointment, commitment duration, work experience (in years) and experience in similar works (in years). However, none of the listed personnel was identified as the supervisor as required by the tender document.

We then reviewed regulations 210(1) and 213(1) and (2) of the Regulations which read as follows: -

***"r.210 - (1) The tender evaluation shall be consistent with the terms and conditions prescribed in the tender documents and such evaluation shall be carried out using the criteria explicitly stated in the tender documents.***

***r.213 -(1) The procuring entity's determination of a tender's responsiveness shall be based on the***

Handwritten signatures in blue ink, appearing to be initials or names, located at the bottom of the page.

***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 the deviation.”***

(Emphasis supplied)

The above provisions establish that evaluation of tenders must be based solely on the terms and conditions set forth in the tender document, without reference to extrinsic evidence. Furthermore, if a tender fails to meet the criteria specified in the tender document, it must be rejected and may not be made responsive by correction or withdrawal of the deviation.

Applying these provisions to the facts of this case, we observed that the appellant did not include the required five supervisors in the list of personnel submitted. This constitutes a failure to comply with the key personnel criterion as stipulated in the tender document. Accordingly, we find the respondent's decision to disqualify the appellant's tender on this ground was proper and justified.

We considered the appellant's argument that one of the listed personnel could be identified as a supervisor and observe that the argument is baseless, as supervisors were to be explicitly identified in the list of personnel submitted in NeST when submitting tenders. Identification of supervisors cannot be made based on information beyond what tenderers provided at the time of submission.

The image shows two sets of handwritten marks in blue ink. On the left, there are stylized initials that appear to be 'AS'. To the right of these initials is a large, bold, handwritten signature that is difficult to decipher but appears to be 'AS'. There is a horizontal line or stroke between the two sets of marks.

We further examined the respondent's contention that the key personnel requirement clearly mandated tenderers to identify five supervisors for the required five stations. The respondent asserted that all tenderers who advanced to the technical evaluation stage, including the proposed awardee, complied with this requirement. To ensure fairness and equal treatment of all tenderers as mandated by section 5 of the Act, we reviewed the proposed awardee's tender submitted in NeST, focusing on the key personnel requirement slot to verify compliance with this requirement. Our review revealed that the proposed awardee listed six personnel: Daniel Iyongo (supervisor), James Maiya (server), Adolf Nyenza (server), Beatrice Samwel (cook), Erick Godfrey Simon (chef), and Tegeme Massawe (cook).

From this review, it is evident that the proposed awardee designated only one individual as a supervisor instead of five supervisors required by the tender document and on the respondent's own admission. Despite this discrepancy, the respondent's evaluation team concluded that the proposed awardee met this criterion, whereas the appellant was disqualified for failing on the same requirement.

In light of this inconsistency, we find that the respondent's decision to qualify the proposed awardee on this criterion while disqualifying the appellant contravenes section 5(3) of the Act which reads as follows: -

*"s.5 (3) Procuring entities shall, in the execution of their duties, undertake to achieve the highest standards of equity, taking into account-*



- (a) equality of opportunity to all tenderers;***
- (b) fairness of treatment to all parties;***
- (c) promotion of local industry, sustainable development and protection of the environment;*
- (d) the need to obtain the best value for money in terms of price, quality and delivery, having regards to prescribed specifications and criteria”.*

(Emphasis supplied)

After the foregoing, it is evident that the award to the proposed awardee was improper.

We further considered the appellant’s contention that the respondent erred in law by proposing to award the tender to a tenderer who quoted a higher price than the appellant’s. To assess the validity of this argument, we reviewed the appeal records and noted that the appellant was disqualified at the technical evaluation stage for failure to specify the required supervisors and submit their CVs in accordance with the key personnel requirement. Because the appellant’s tender was deemed non - responsive at the technical evaluation stage, it was excluded from the financial evaluation.

Regulation 219 (a) of the Regulations states as follows:

*” r. 219. The successful tender shall be-*

- (a) the tender with 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**, subject to any margin of preference applied;*  
*(Emphasis Added)*

The above provision establishes that a successful tender is the one with the lowest evaluated price in case of goods, works or services or the highest price in case of revenue collection. As previously noted, the appellant was disqualified at the technical evaluation stage, therefore, its quoted price was not considered alongside those of tenders that advanced to the financial comparison stage. Consequently, we reject the appellant's contention in this regard.

We also examined the appellant's complaint regarding the respondent's failure to entertain its application for administrative review. In this regard, we reviewed the provision of section 121 (2) (a) of the Act which reads as follows:-

*"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";*

The above provision states that where an accounting officer fails to issue a decision within the time prescribed under the Act, a tenderer has the right



to submit a complaint directly to the Appeals Authority, provided the complaint is filed within five working days after expiry of the decision period.

Applying this provision to the facts of this case, the appellant was dissatisfied with the Notice of Intention to Award issued on 5<sup>th</sup> February 2026 and subsequently applied for administrative review on 9<sup>th</sup> February 2026. The respondent was required to issue a decision by 16<sup>th</sup> February 2026 but failed to do so. Aggrieved by this, the appellant lodged the present appeal with the Appeals Authority on 22<sup>nd</sup> February 2026 pursuant to section 121 (2) (a) of the Act.

Based on these facts, we are of the view that the respondent's failure to issue a decision on the appellant's complaint is neither acceptable nor legally justifiable. However, the appellant was not prejudiced by this failure, as it properly exercised its right to escalate the dispute directly to the Appeals Authority within the prescribed time. For that reason, we reject the appellant's claim on this ground.

Consequently, we conclude affirmatively on the first issue that the disqualification of the appellant's tender was justified.

## **2. What reliefs, if any, are the parties entitled to?**

In light of our findings on the first issue, we hold that the disqualification of the appellant's tender was justified, and we hereby dismiss the appeal. We make no order as to costs.

**It is so ordered.**



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

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

This decision is delivered in presence of the parties on this 20<sup>th</sup> day of March 2026.

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



.....

**CHAIRPERSON**

**MEMBERS: -**

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

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