

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 33 OF 2025-2026

BETWEEN

M/S KAY BOUVET ENGINEERING LTD.....APPELLANT

AND

**TANZANIA PETROLEUM DEVELOPMENT
CORPORATION.....RESPONDENT**

DECISION

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (Rtd) Awadh Bawazir | - Chairperson |
| 2. Eng. Lazaro Loshilaari | - Member |
| 3. Ms. Florentina Sumawe | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

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

FOR THE APPELLANT

- | | |
|----------------------------|-----------------------|
| 1. Mr. Lorenzo Simon | - Project Coordinator |
| 2. Mr. Sripal Kamalakannan | - Manager |



FOR THE RESPONDENT

- | | |
|-----------------------------|------------------------------|
| 1. Mr. Isack James | - Senior Procurement Officer |
| 2. Mr. Nasser Nzamba | - Senior Legal Officer |
| 3. Mr. Jovin Kulindwa | - Senior Accounts Officer |
| 4. Eng. Barakaeli Christian | - Senior Engineer |
| 5. Mr. David Deus | - Senior Procurement Officer |

The appeal was lodged by **M/S Kay Bouvet Engineering Ltd** (hereinafter referred to as "the appellant") against **Tanzania Petroleum Development Corporation**, abbreviated as "**TPDC**" (hereinafter referred to as "**the respondent**"), concerning Tender No. TR24/2024/2025/W/12 for Rehabilitation of Storage Tank No. 8 (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 may be summarized as follows:

The tender was done in accordance with the National Competitive Tendering method as provided under 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 10th November 2025, the respondent, through the National e-Procurement System of Tanzania (**NeST**), invited eligible tenderers to participate in the tender. By the submission deadline of 10th



December 2025, four tenders were received and evaluated, including the appellant's. Thereafter, the Evaluation Committee recommended award of the tender to M/S BSL Infrastructure Ltd **(the proposed awardee)**.

On 12th April 2026, the respondent issued a Notice of Intention to award, informing the appellant of its intention to award the tender to the proposed awardee at the contract price of Tanzania Shillings Seventeen Billion Two Hundred Eighty-Nine Million Six Hundred Twenty-Nine Thousand Six Hundred Fifty-Three and Three Cents only (TZS 17,289,629,653.03) VAT Exclusive. The Notice further stated that the appellant's tender was not considered for award as it failed to comply with the criterion on access to financial resources.

Dissatisfied with the reason given for its disqualification, the appellant applied for administrative review to the respondent on 16th April 2026. On 20th April 2026, the respondent issued its decision dismissing the appellant's application for administrative review. Aggrieved further, the appellant filed this appeal to the Appeals Authority on 27th April 2026.

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

- 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 Mr. Lorenzo Simon, Project Coordinator, assisted by Mr. Sripal Kamalakannan, Manager.

Mr. Simon commenced by stating that this appeal is founded on the following grounds:

- i) Access to financial resources.
- ii) Procedural fairness, equal treatment and the evaluation approach.
- iii) Clarification and fair evaluation process.
- iv) Non-compliance with statutory requirement.
- v) Non-adherence to the value for money principle.

On the first ground of appeal, Mr. Simon submitted that the appellant was among the tenderers who participated in the tender process advertised by the respondent. Following completion of the internal processes, the respondent issued a Notice of Intention to award informing the appellant that its tender was found non-responsive for failure to comply with the access to financial resources criterion. Dissatisfied, the appellant sought administrative review to the respondent and subsequently filed this appeal.

He argued that it is incorrect to state that the appellant failed to comply with access to financial resources criterion. The tender document required tenderers to demonstrate access to financial resources amounting to TZS 7,000,000,000. In compliance, the appellant submitted a documentation showing access to USD 15 billion (equivalent to TZS 45 billion), substantially exceeded the prescribed threshold.



Mr. Simon contended that the respondent did not dispute the appellant's financial capacity or experience, but rather disqualified it for alleged failure to demonstrate access to financial resources. He argued the respondent ought to have applied clause 28.2 of the Instructions to Tenderers (ITT), which provides guidance on determination of material and minor deviations. In so doing the respondent would have established that the appellant's documentation, extracted from the audited financial statement for the year 2023-2024, substantiated compliance. He maintained that any perceived omission should have been treated as minor deviation, as it did not affect the scope of works or reduce competition.

On the second ground of appeal concerning procedural fairness, equal treatment, and the evaluation approach, Mr. Simon submitted that the tender document required demonstration of access to financial resources but did not restrict the proof to bank reference letters, statements, letters of credit, or credit facilities. He argued that the respondent improperly relied on such documents which were not expressly stipulated in the tender document, resulting in applying undisclosed evaluation criteria during evaluation.

He averred that this contravened clause 38.6 of the ITT and regulation 210 of the Regulations, which require evaluation to be based solely on the requirements provided in the tender document. He maintained that the respondent's conduct violated the procurement principles of fairness, transparency, and equal treatment.

Regarding the third ground on clarification and fair evaluation process, Mr. Simon argued that if the respondent doubted the appellant's



documentation, it should have sought clarification before declaring the tender non-responsive. He submitted that such clarification would have enabled the appellant to provide additional supporting evidence. The failure to seek clarification, he contended, deprived the appellant of an opportunity to explain its financial position and to address concerns, thereby breaching principles of fairness, transparency, and equal treatment.

On the fourth ground concerning non-compliance with a statutory requirement, Mr. Simon stated that the proposed awardee is a joint venture between M/S BSL Infrastructure Ltd and M/S FEI-MAC Ltd. He argued that the joint venture failed to comply with the statutory registration requirements under the Contractors Registration Act.

He explained that M/S BSL Infrastructure Ltd, registered as a Class One Mechanical Contractor by the Contractors Registration Board (CRB) would handle mechanical works, while M/S FEI-MAC Ltd, registered as Class Four Civil Contractor would be responsible for civil works. However, under the Contractors Registration Act, a class four civil contractor is authorized to undertake contracts valued at not more than TZS 1.5 billion. Since the civil works exceeded this limit, M/S FEI-MAC Ltd lacked the legal capacity to execute the contract. He therefore contended that the respondent's decision to award the tender to the proposed awardee was invalid.

By contrast, Mr. Simon emphasized that the appellant fully complied with the registration requirements and possessed the requisite experience and financial capability, yet was unfairly denied the opportunity to perform the contract.



On the fifth ground regarding non-adherence to the value for money principle, Mr. Simon submitted that the appellant's quoted price was USD 5,883,897.874 (approximately TZS 14 billion), compared to TZS 16,726,696,116.58 quoted by M/S Synergetic Engineering & Advisory Partners and TZS 18,220,336,675.075 quoted by the proposed awardee. He argued that the appellant's price was the lowest and therefore offered the best value for money.

He contended that awarding the tender to the proposed awardee at price exceeding the appellant's by more than TZS 3.92 billion was contrary to the principle of value for money, as the excess funds could have been utilized for other government projects.

Mr. Simon stated further that the respondent unlawfully disqualified the appellant's tender at the preliminary evaluation stage, depriving it of the opportunity to proceed to the technical and financial evaluation stages. He maintained that had the tender been properly evaluated, the appellant's price would have been considered potentially resulting in award of the contract. He asserted that this contravened clauses 30.1, 30.2, and 37.1 of the ITT.

He added that the respondent's decision to award the tender to the third highest tenderer instead of the second lowest further demonstrate failure to adhere to the principle of value for money.

Finally, Mr. Simon prayed for the following orders: -

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- i. Nullify the respondent's decision that disqualified the appellant's tender and declare the appellant to be the lowest evaluated tenderer and being awarded the contract.
- ii. A declaration that the evaluation process did not adhere to the criteria provided in the tender document.
- iii. The respondent be ordered to re-evaluate the tender in compliance with the criteria provided in the tender document and the Act and its Regulations.
- iv. Nullify the whole tender process and order for re-tendering.
- v. Costs of the appeal be borne by the respondent.

REPLY BY THE RESPONDENT

The respondent's submissions were made by Mr. Nasser Nzamba, Senior Legal Officer, who commenced by adopting the respondent's statement of reply as part of his submissions.

Responding to the first and second grounds of appeal, Mr. Nzamba submitted that the appellant's tender was disqualified for failure to comply with the access to financial resources criterion, as clearly indicated in the Notice of Intention to Award. He explained that this requirement was provided under Section IV: Qualification and Evaluation Criteria, specifically under Financial Situation and Performance. Supporting documents were prescribed under Section VI, particularly in the attachment relating to specifications and drawings, which categorically state:



"Source of finance document must be in acceptable forms of evidence include bank reference letters indicating sufficient credit facilities, confirmed lines of credit and other verifiable financial commitments from recognized financial institutions".

He argued that the appellant's claim that the tender document did not specify the required documents is misconceived. The tender document expressly stipulated the acceptable forms of evidence and the appellant's failure to submit them was a clear case of non-compliance. He emphasized that the respondent did not dispute the appellant's financial capability but rather its failure to provide adequate proof in acceptable forms of evidence.

Mr. Nzamba further submitted that the evaluation process was conducted strictly in accordance with the tender criteria, without introducing alien requirements. He therefore asserted that the evaluation complied with clause 38.6 of the ITT and regulation 210 of the Regulations. He added that the appellant's disqualification was consistent with regulation 213(2) of the Regulations, which requires rejection of a non-responsive tender and the same should not be made responsive by correction or withdrawal of the deviations.

In support, Mr. Nzamba relied on PPAA Appeal Case No. 45 of 2019/2020 between ***M/S Advent Construction Ltd vs Tanzania National Roads Agency*** (TANROADS) where it was held that:

"A procuring entity has no mandate to introduce new criteria or waive mandatory requirements during



evaluation; to do so would amount to unfair treatment of bidders."

He also referred to PPAA Appeal Case No. 12 of 2020/2021 between ***M/s Estim Construction Ltd vs Tanzania Electrical Mechanical and Electronics Services Agency (TEMESA)***, where the Appeals Authority emphasized that:

"Bidders are bound by the requirements of the tender document, and failure to comply with mandatory provisions renders a bid non-responsive.

Based on those submissions, Mr. Nzamba urged the Appeals Authority to reject the appellant's argument and to find that the tender document clearly specified the documentary evidence required to demonstrate access to financial resources.

In response to the third ground relating to clarification and fair evaluation process, Mr. Nzamba submitted that the respondent could not seek clarification on a clear case of non-compliance. Clause 28.5 of the ITT allows clarification only for responsive tenders with minor irregularities that do not affect the scope or price. He argued that the appellant's failure to meet the requirement of access to financial resources was a material deviation, not a minor irregularity.

He added that seeking clarification in such circumstances would amount to submission of new information after the tender opening, contrary to clause 28.7 of the ITT and regulation 214(1) of the Regulations, which prohibits making a non-responsive tender responsive through clarification.



In support, he cited PPAA Appeal Case No. 8 of 2022-23, ***between M/S Handan Iron and Steel Group Company Ltd (HBIS Group Company Ltd) and Kastipharm Ltd (JV) versus Tanzania Railways Corporation***, where the Appeals Authority held that clarification cannot be sought on a clear requirement expressly provided in the tender document.

Responding to the fourth ground that the proposed awardee was ineligible due to its joint venture composition, Mr. Nzamba submitted that the argument is unfounded. He explained that the tender document clearly indicated that the major component of the project comprised mechanical works. He elaborated that the joint venture agreement showed M/S BSL Infrastructure Ltd, a class one registered mechanical contractor and the lead partner, would undertake the major portion of the project, while M/S FEI-MAC Ltd, a class four civil contractor, would execute the civil works component, whose value fell within its registration limits. He asserted that the JV composition complied with the tender document requirements and was therefore eligible for award.

On the issue of value for money principle, Mr. Nzamba submitted that price comparison is undertaken only at the financial evaluation stage, after tenders have passed preliminary and technical evaluation. He explained that at the preliminary evaluation stage, tenderers are assessed for responsiveness under clause 28.1 of the ITT, and at the technical evaluation stage, conformity to specifications is examined.

Since the appellant's tender was found non-responsive at the preliminary evaluation stage for failure to demonstrate access to financial resources, it



did not reach the technical and financial evaluation stages. He emphasized that the appellant's non-compliance constituted a material deviation under clauses 28.2(c) and 28.8(k) of the ITT, regulation 211(2)(k) of the Regulations and Section IV - Qualification and Evaluation Criteria. Consequently, the appellant's quoted price, though lower, could not have been considered for award.

In conclusion, Mr. Nzamba prayed for the following orders:

- i. Dismissal of the Appeal in its entirety for lack of merits.
- ii. Uphold the respondent's decision to disqualify the appellant's tender for being non-responsive to the requirements of the tender document.
- iii. A declaration that the intended award of the tender to the proposed awardee complied with the tender document, the Act and its Regulations.
- iv. A declaration that the respondent complied with the Act and its Regulations in evaluating the tender.
- v. Reject the appellant's allegation that the respondent had contravened the procurement principles.
- vi. Costs of the appeal be borne by the appellant, including administrative and legal costs incurred by the Respondent.
- vii. Any other reliefs the Appeals Authority deems just and fair to grant.



ANALYSIS BY THE APPEALS AUTHORITY

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

In addressing this issue, we carefully considered the parties' competing arguments. The appellant contended that its disqualification was unjustified, arguing that it had sufficiently demonstrated access to financial resources and therefore should not have been found non-compliant with this criterion. Conversely, the respondent maintained that the appellant was lawfully and fairly disqualified for failing to provide adequate evidence of compliance with the financial resources requirement as prescribed in the tender document.

To ascertain the validity of these parties' arguments, we reviewed the evaluation report and noted that the appellant was disqualified at the preliminary evaluation stage for submitting a document that failed to demonstrate access to financial resources amounting to TZS 7,000,000,000/-.

We further examined Item 3 of Section IV (b) – Qualification and Evaluation Criteria which provides as follows:

"Item 3 Financial Situation and Performance

Access to Financial Resources (Sources of Fund) SCORE: Comply/ Not Comply to specified minimum requirements)

Tenderers are required to demonstrate details of their sources of finance that show their ability to access adequate finances to meet the cash flow requirements of current and future contracts. (In case



of Joint Venture, compliance requirements are all Parties Combined – Must meet the requirements).

<i>Average fund amount from all sources (any freely convertible currency proposed by bidder.</i>	<i>7,000,000,000”</i>
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(Emphasis Added)

This criterion requires tenderers to demonstrate their ability to access adequate financial resources to meet the cash flow demands of both current and future contracts. The minimum amount specified was TZS 7,000,000,000/- from any available sources of funds.

Upon reviewing the appellant’s tender submitted through NeST, we observed that under the slot for access to financial resources, the appellant attached a document bearing its office letterhead, indicating financial resources amounting to INR 1,308,514,277/- and USD 15,693,383/-. The document stated that these resources comprised cash at hand, bank balances and deposits, trade receivables, and earnings before depreciation, finance costs and tax.

However, a further review revealed that the document merely provided a breakdown of how the required TZS 7,000,000,000/- would be sourced. Crucially, no supporting documentation was attached to substantiate the actual availability of the stated funds.

We reviewed the tender document under Section VI, particularly the attachment relating to specifications and drawings (Attachment No. 2, Item 4.1(c)) which reads as follows: -



"4.1 FINANCIAL CAPABILITY

Each bidder must provide comprehensive financial documentation that evidentially supports their capability to fund and sustain operations for a project of this magnitude. The following documents and criteria are required:

c. Access to Financial Resources

*Tenderers should demonstrate to have access to financial resources with a minimum of TZS 7,000,000,000 (Tanzania Shillings Seven Billion) to meet the cash flow requirements for the project. **Source of finance document must be in acceptable forms of evidence include bank reference letters indicating sufficient credit facilities, confirmed lines of credit, and other verifiable financial commitments from recognized financial institutions.***

[Emphasis supplied]

The above provision expressly required tenderers to demonstrate access to financial resources by submitting supporting documents such as bank reference letters, confirmed lines of credit, or other verifiable financial commitments from recognized financial institutions.

We considered the appellant's contention that the tender document did not specify the required documents for demonstrating access to financial resources. Based on the foregoing, we find this argument to be without



merit, as Section VI, particularly Attachment No. 2, Item 4.1(c), clearly stipulates the required forms of evidence.

Applying this requirement to the appellant's tender, we observed that the appellant had not attached any acceptable form of evidence demonstrating the availability of financial resources.

Regulations 211 (2) (k) and regulation 213(2) of the Regulations provide as follows:

"r. 211 (2) The following deviations from substantial commercial terms and conditions shall justify rejection of a tender:

(k) failure to submit major supporting documents to determine substantial responsiveness of a tender stipulated in the tender documents."

r.213 - (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 added]

These provisions clearly indicate that a tender may be rejected if a tenderer fails to submit major supporting documents required by the tender document to establish substantial responsiveness. Furthermore, once a tender has been found non-responsive, it cannot subsequently be rendered responsive through correction or withdrawal of the deviation.



From the record of appeal, it is evident that the appellant failed to submit the documentary evidence required to demonstrate access to financial resources as stipulated under the tender document. In view of this position, we find that the respondent's decision to disqualify the appellant's tender was justified and consistent with regulation 213(2) of the Regulations.

We further considered the appellant's contention that, before disqualifying its tender, the respondent was required to seek clarification regarding compliance with the access to financial resources criterion, in accordance with clauses 27.1 and 28.5 of the ITT and regulation 214(1) of the Regulations. The provisions state:

"27.1. In order to assist in the examination, evaluation, and comparison of Tenders, and post-qualification of Tenderers, the PE may, at its discretion, ask any Tenderer for clarification of its tender, including breakdowns of prices in the Activity Schedule. Any clarification submitted by a Tenderer that is not in response to a request by the PE shall not be considered.

28.5 Provided that a Tender is substantially responsive, the PE may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non- conformities in the Tender related to



documentation requirements. Requesting information or documentation on such non conformities shall not be related to any aspect of the price of the tender. Failure of the Tenderer to comply with the request may result in rejection of its Tender.

r. 214.-(1) A procuring entity may request a tenderer to clarify his tender in order to assist in the examination, evaluation and comparison of tenders but no advantage shall be sought, offered or permitted to change any matter of substance in the tender, including changes in price or changes aimed at making an unresponsive tender responsive."

(Emphasis Added)

These provisions make it clear that a procuring entity has discretion to seek clarification from tenderers regarding information contained in their tenders. However, such clarifications are limited to non-material and non-conformities that cannot be used to render a non-responsive tender responsive, or to alter the scope of work or the quoted price.

Applying these provisions to the present case, we observe that the appellant failed to comply with the access to financial resources criterion. If the respondent had sought clarification on this non-compliance, such an act would have effectively rectified the appellant's tender, thereby



rendering a non-responsive tender responsive. This would contravene regulation 214(1) of the Regulations and clause 27.1 of the ITT. Accordingly, we reject the appellant's contention that the respondent was required to seek clarification before declaring its tender non-responsive.

We further considered the appellant's contention that the respondent failed to uphold the principle of value for money, as the appellant quoted a lower price than the proposed awardee. In this regard, we reviewed regulation 219(a) of the Regulations which reads 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)

This provision clearly establishes that a successful tender is determined based on the lowest evaluated price in case of goods, works or services or the highest price in case of revenue collection, but not necessarily the lowest or highest quoted price.

Applying this provision to the facts of the appeal, we noted from the evaluation report that the appellant was disqualified at the preliminary evaluation stage for failure to demonstrate compliance with the access to

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financial resources criterion. Consequently, its tender did not proceed to the technical and thereafter financial evaluation stages, where its quoted price would have been compared with other tenderers. In the circumstances, the appellant's ground on value for money lacks merit.

We lastly considered the appellant's assertion regarding the proposed awardee's alleged failure to comply with statutory registration requirements. However, we observed that during the hearing, the appellant withdrew this argument after receiving clarification from the respondent on the scope of the project. Accordingly, we will not delve into it.

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

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

Having determined the first issue, we find that the appeal lacks merit. Accordingly, the appeal is hereby dismissed. The respondent is ordered to proceed with the tender process in strict observance of the law. 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 seek Judicial Review pursuant to Section 125 of the Act.



This decision is delivered in the presence of the parties on this 4th day of June 2026.

HON. JUDGE (rtd) AWADH BAWAZIR



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CHAIRPERSON

MEMBERS: -

1. ENG. LAZARO LOSHILAARI



2. MS. FLORENTINA SUMAWE

