IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 43 OF 2025-26

BETWEEN

M/S SEC MORE INVESTMENT LIMITED.................. APPELLANT

AND

TANZANIA BUREAU OF STANDARDS .... RESPONDENT

DECISION

CORAM

1. Ms. Florentina Sumawe - Ag. Chairperson
2. Dr. William Kazungu - Member
3. Dr. Gladness Salema - Member
4. Mr. James Sando - Secretary

SECRETARIAT

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

FOR THE APPELLANT

1. Mr. Nelson Mwingira - Managing Director
2. Ms. Marseline Massawe - Advocate, Augustino Law Office
3. Ms. Anily Kivembele - Advocate, Augustino Law Office
4. Ms. Evelyne Mwangwa - Technical Manager

FOR THE RESPONDENT

1. Mr. Ayoub Sanga	- Senior State Attorney – OSG
2. Mr. Boaz Msoffe	- State Attorney- OSG
3. Ms. Beatrice Manyori	- State Attorney-OSG
4. Mr. Bahati Chonya	- Legal Services Manager-TBS
5. Ms. Lucy Mallya	- Senior Legal Officer-TBS
6. Ms. Mwasiti Maggid	- Procurement Manager-TBS
7. Ms. Oliver Lekule	- Senior Procurement Officer-TBS
8. Mr. Philemon Numvile	- Procurement Officer-TBS

This appeal was lodged by **M/S Sec More Investment Limited** (hereinafter referred to as **"the appellant"**) against **Tanzania Bureau of Standards** abbreviated as **TBS** (hereinafter referred to as **"the respondent"**) concerning Tender No. TR34/2025/2026/G/46 for the Supply, Installation, Testing, Training, and Commissioning of Thermometry Equipment which comprised five lots. This present appeal pertains to Lot 1, for Temperature Data Loggers and Data Logger for Humidity, Temperature, Pressure and Dewpoint (hereinafter referred to as **"the tender"**).

Considering 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 Restricted International Competitive Tendering method, in accordance with provisions of 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 22nd April 2026, the respondent, through the National e-Procurement System of Tanzania (**NeST**), invited eligible tenderers to participate in the tender. By the submission deadline of 4th May 2026, four tenders, including that of the appellant, were received for Lot 1 and subjected to evaluation. Upon completion of the evaluation, the Evaluation Committee recommended award of the tender to M/S Imperial East Africa Limited (**the proposed awardee**).

On 28th May 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 a contract price of Tanzania Shillings Seventy-Seven Million Five Hundred Forty-Three Thousand Four Hundred Fifteen Only (TZS 77,543,415.00), VAT Exclusive, for a completion period of 90 days. The Notice further stated that the appellant's tender was not considered for award because only one of the submitted documents satisfied the specific experience requirement, while the remaining documents were deemed irrelevant to the tender.

Dissatisfied with its disqualification, the appellant applied for an administrative review to the respondent on 4th June 2026. The record shows that the respondent did not entertain the appellant's application in a timely manner. Aggrieved, the appellant lodged the present appeal before the Appeals Authority on 17th June 2026.

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

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

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

SUBMISSIONS BY THE APPELLANT

The appellant's submissions were made by Ms. Marseline Massawe, assisted by Mr. Nelson Mwingira.

Ms. Massawe commenced by stating that the appellant was among the tenderers who participated in the tender. Upon receipt of the Notice of Intention to Award, and being dissatisfied with the reason for its disqualification, the appellant applied for administrative review to the respondent on 4th June 2026. She emphasized that the respondent was required to issue its decision within five working days but failed to do so, thereby contravening sections 119 and 120 of the Act. Consequently, the appellant was compelled to lodge the present appeal.

Ms. Massawe submitted that the appellant disputes its disqualification from the tender process on the grounds that it was neither proper nor justified. She referred to Section IV – Qualification and Evaluation Criteria, which sets out the requirement of specific experience. The criterion required tenderers to submit three contracts of a similar nature, each with a substantial completion of at least 80%, executed between 1st January 2021 to 31st December 2025. She contended that, in compliance with this requirement, the appellant attached nine documents to its tender, demonstrating compliance with the specific experience criterion. Some of the submitted contracts had been fully completed while others had been executed above 80%. She therefore argued that the appellant should not have been disqualified for this basis.

To reinforce her position, she cited ***PPAA Appeal Case No. 17 of 2025–2026 between M/S Bisech Investments Company Ltd*** *and* ***Tanzania Airport Authority (KIA),*** where the Appeals Authority relied on regulation 211(2) (g) and (k) of the Regulations in confirming the disqualification of the appellant therein. She argued, unlike in that case, the appellant in the present matter complied with all the requirements of the tender, and therefore regulation 211 of the Regulations, which forms the basis for disqualification in other tenders, is inapplicable in the circumstances of this appeal.

On his part, Mr. Mwingira submitted that specific experience criterion, required contracts executed between 2021 and 2025. In compliance, the appellant attached contracts that met the required criteria in terms of value, period and similarity of works. He elaborated that the tender documents did not require only fully completed contracts, but also those executed to at least 80%. He contended that the appellant's contract with Mbeya University of Science and Technology (MUST), though its specified end date was 31st May 2026, had already been executed beyond 80% by the time the tender was advertised. He further stated that the appellant was not required to attach any document substantiating 80% of the completion, as this was not stipulated in the tender document. Thus, he argued, the contract complied with the tender requirements.

Mr. Mwingira further averred that, in meeting the specific experience criterion, the appellant also submitted the Local Purchase Orders (LPOs) issued by North Mara Gold Mine Limited dated 19th November 2024 and 17th July 2024, valued at TZS 396,349,000.00 and TZS 1,299,190,336.00 respectively. He emphasized that the LPOs were of a similar nature and exceeded the threshold provided in the tender document. He clarified further that the LPOs were not annexed with delivery note or payment invoice, as such documents were not required under the tender. Accordingly, he maintained that the appellant had complied with specific experience requirement.

He concluded his submissions by insisting that, based on the three contracts: MUST and the two LPO's from North Mara Gold Mine Limited, the appellant satisfied the specific experience requirement and therefore, its disqualification was neither proper nor justified.

Finally, Ms. Massawe prayed to the Appeals Authority for the following reliefs:

i) The tender process be suspended.
ii) The respondent's decision in relation to this tender be reviewed.
iii) Any other relief that the Appeals Authority may deem fit to grant.

REPLY BY THE RESPONDENT

The respondent's submissions were made by Mr. Ayoub Sanga, Senior State Attorney. He began by adopting the respondent's Statement of Reply to form part of his submissions. He proceeded to state that, in the disputed tender process, the appellant was fairly disqualified for failure to comply with the specific experience criterion prescribed in the tender document.

Mr. Sanga submitted that Section IV – Qualification and Evaluation Criteria required tenderers to demonstrate specific experience by submitting three contracts, each valued at not less than TZS 200,000,000.00, executed between 1st January 2021 and 31st December 2025. He stated that, in attempting to comply with this requirement, the Appellant submitted nine documents, of which only one, executed with MUST was found relevant to the subject matter of the tender. The remaining documents did not demonstrate the required experience and were therefore non-compliant with the tender requirements.

Addressing the appellant's contention that the LPO issued by Arusha Technical College and the Service Purchase Orders (SPOs) issued by North Mara Gold Mine ought to have been accepted as valid contracts, Mr. Sanga submitted that, for LPOs to qualify as contract, they must satisfy three requirements: (i) the Purchase Order, (ii) the Acceptance of the Order (or Delivery Note), and (iii) the Payment Note or Invoice. He contended that the LPOs submitted by the appellant were not annexed with signed delivery notes or invoices evidencing execution of the contracts. In the absence of sufficient proof of performance, the Respondent found the LPO and SPOs non-compliant with the specific experience requirement.

In support of his position, Mr. Sanga cited the case of ***Leonard Rubuye*** *versus* ***Yara Tanzania Limited, Civil Appeal No. 219 of 2018 (CAT at Dar es Salaam),*** where, at page 26 (last paragraph) and 27, the Court analyzed the conditions under which an LPO qualifies as a contract. He added that the same position was affirmed in ***Bright Technical System and General Supplies Limited*** *versus* ***Institute of Finance Management (IFM), Civil Appeal No. 12 of 2020 (CAT).***

He further submitted that section 69(12) of the Act, read together with regulation 240(3) of the Regulations, clearly provides that a contract becomes valid only after being signed by both parties. In the disputed tender, the appellant attached Notification of Award and Notices of Intention to Award as proof of specific experience. However, the actual contracts referred to in those notices were not attached. Consequently, the respondent was unable to verify the existence of the contracts, and the notices were found insufficient to establish compliance with specific experience criterion. Therefore, they were rejected.

Mr. Sanga further contended that the contract signed between the appellant and TANESCO did not satisfy the specific experience requirement, as it was for the supply of spare parts and was therefore not similar in nature with the tender under appeal. He referred the Appeals Authority to ***Sec More Investment Limited*** *against* ***University of Dodoma,*** PPAA Appeal Case No. 02 of 2024/2025, at page 18, where the issue of similarity in nature was discussed. He added that the same position was adopted in ***Sahel Trading Company Ltd v. Tanzania Posts Corporation Limited,*** PPAA Appeal Case No. 37 of 2021/2022, in which the Appeals Authority analyzed what constitutes similarity in nature.

In view of the foregoing, Mr. Sanga submitted that the appellant's disqualification was fair, as it was in accordance with section 87 of the Act, read together with regulation 211 of the Regulations and Section IV – Qualification and Evaluation Criteria governing the specific experience requirement.

He concluded his submission by stating that the appellant's failure to submit the required contracts amounted to a major deviation from the tender conditions, as it affected the appellant's capability to execute the contract in dispute. He referred to *Bisech's* case (supra), in which the Appeals Authority interpreted the relevant provisions on major deviations. He maintained that the appellant was fairly disqualified.

Finally, he prayed that the appeal be dismissed with costs and that the appellant's prayers be rejected.

REJOINDER BY THE APPELLANT

In her brief rejoinder, Ms. Massawe countered the respondent's argument that, for an LPO to qualify as a contract, it must be accompanied by a Purchase Order, Delivery Note, and Invoice to prove that it was executed.

She argued that such a requirement was not provided in the tender document. She further questioned the basis upon which the respondent verified the execution of the other submitted contracts, given that those contracts were likewise submitted without any supporting documents proving their execution.

ANALYSIS BY THE APPEALS AUTHORITY

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

In resolving this issue, we considered the appellant's contention that, in compliance with specific experience criterion, it attached nine contracts to its tender, of which three satisfied the criteria stipulated in the tender document. The appellant argued that despite this compliance, the respondent unfairly disqualified its tender. Conversely, the respondent maintained that only one of the documents submitted by the appellant qualified as a contract and satisfied the specific experience criterion provided in the tender document.

The tender document expressly required tenderers to submit three contracts of a similar nature, each valued at not less than TZS 200,000,000.00, executed between 1st January 2021 to 31st December 2025. The respondent argued that the appellant's submission of only one contract meeting these requirements justified its disqualification from the tender process.

To ascertain the validity of the parties' arguments, we carefully reviewed Section IV - Evaluation and Qualification Criteria, specifically the technical evaluation requirement on specific experience, which provides as follows:

"Specific Experience (SCORE: Comply/Not comply to specified minimum requirements)

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.

Specific Experience	*Supply, Installation, Testing, Training and Commissioning of Laboratory Equipment*
Specific Experience Start Year	*2021-01-01*
Specific Experience End Year	*2025-12-31*
Number of Specific Experience Contracts	*3*
Value of each specific experience contract in the specified tender currency	*200000000"*

This provision requires tenderers to demonstrate their specific experience in the supply, installation, testing, training and commissioning of laboratory equipment by submitting three contracts executed between 1st January 2021 and 31st December 2025, each with a minimum value of TZS 200,000,000.00.

In determining whether the appellant complied with the specific experience requirement, we reviewed its tender submitted through NeST and observed that it attached nine documents under specific experience. During the hearing, Mr. Nelson Mwingira informed the Appeals Authority that, among the nine documents, three were relevant contracts which complied with the tender requirements. These were:

i) Contract for Supply, Installation, Testing, Commissioning and Training of Workshops Equipment for the HEET Project at MUST Main Campus. (GEOSCIENCE AND MINING) CONTRACT No. TR83/HEET/P166415/2024/2025/G/01 LOT 04 with a value of TZS 704,438,829.91, signed on 7th April 2025 and ends on 31st May 2026.

ii) Service PO 4500952381 issued by North Mara Gold Mine Limited for Maintenance of Fuel Farm System and Supply and Installation of Inductively Coupled Plasma Mass Spectrometer (ICP-MS) and Maintenance of Fuel Farm Systems. The Service PO had a value of TZS 1,299,190,336.00 and was issued on 17th July 2024 and delivery date was 30th September 2024.

iii) Service PO 4501045302 issued by North Mara Gold Mine Limited for Fuel Management System for Cathodic and Dipping with a value of TZS 396,349,000.00. The PO was issued on 19th November 2024 and the delivery date was 31st January 2025.

We further observed that, during the hearing, the respondent indicated that, of the three contracts claimed by the appellant, only the contract executed with MUST was accepted as valid during evaluation. The remaining documents were considered non-compliant. In view of this admission, we find it necessary to establish whether the two Service POs issued by North Mara Gold Mine Limited demonstrated specific experience relevant to this tender.

Upon review of Service PO 4500952381, we noted that it concerned with the Supply and Installation of Inductively Coupled Plasma Mass Spectrometer (ICP-MS) and Maintenance of Fuel Farm Systems. However, the disputed tender i.e Lot 1, relates to Temperature Data Loggers and Data Logger for Humidity, Temperature, Pressure and Dewpoint. These scopes involve distinct technical applications and performance requirements although they are similar in terms of supply, installation, testing and commissioning. Accordingly, we find that this Service PO does not demonstrate specific experience of a similar nature to the subject matter of the tender.

Similarly, Service PO 4501045302 concerned a Fuel Management System and Cathodic Dipping. This scope is technically distinct from Lot 1 which involves instruments specifically designed for monitoring and recording environmental parameters, namely humidity, temperature, pressure and dewpoint. We therefore find that this Service PO 4501045302 also fails to demonstrate specific experience of a similar nature to the tender.

In view of these observations, it is clear that the works executed under the two Service POs are irrelevant to the tender, and were rightly deemed non-complaint with the specific experience criterion.

We further reviewed the remaining documents attached to the appellant's tender. These included two notifications of award from Ardhi University and National Institute for Medical Research, as well as the Notice of Intention to Award from the University of Dar es Salaam. However, none of these were accompanied by signed contracts indicating the start and end dates. Without such contracts, compliance with specific experience requirement could not be established. Accordingly, these documents were non-compliant.

Additionally, the attached two Local Purchase Orders from Arusha Technical College and Weight and Measures Agency, both had values fell below the required threshold TZS 200,000,000.000. Regarding the appellant's closed framework agreement with TANESCO, it extended beyond the period specified in the tender document of 31st December 2025 and had no evidence of 80% completion. Thus, these three documents were equally non-compliant.

We reviewed regulations 210(1), 211(2)(g)(k) and 213(1) and (2) of the Regulations which provides:

> *"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.211 (2) The following deviations from substantial commercial terms and conditions shall justify rejection of a tender:*
>
> ***(g) failure to comply with minimum experience criteria specified in the tender document.***

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

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 the deviation."

(Emphasis added)

The above provisions require that tender evaluation must be consistent with the criteria stated in the tender document, and that failure to comply with minimum experience criteria constitutes a major deviation justifying rejection. Furthermore, a tender's responsiveness must be determined solely based on the contents of the tender document and a non-responsive tender cannot subsequently be made responsive by correction or withdrawal of the deviation.

Applying these provisions to the facts of this appeal, we observe that the appellant did not comply with specific experience criterion. Its tender was therefore declared non-responsive. We find the respondent's act of declaring the appellant's tender non-responsive to be proper and in accordance with the law.

With respect to the appellant's contention that the respondent failed to determine its application for administrative review, we have examined the record in NeST. The record shows that the appellant submitted its application on 4th June 2026, and the respondent was required to issue a decision within five working days, i.e., on or before 11th June 2026. However, no decision was issued within the prescribed period. Consequently, the appellant lodged the present appeal before the Appeals Authority on 17th June 2026.

We find that the respondent's failure to determine the appellant's application contravened the requirements of the law. However, the Act allows a tenderer to lodge an appeal directly to the Appeals Authority when the procuring entity fails to issue its decision within the prescribed period. This position is supported by section 121(2) of the Act, which provides 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."***

(Emphasis supplied)

From the above requirement of the law, we find that the appellant properly exercised its statutory right by submitting its appeal to the Appeals Authority within prescribed time, following the respondent's failure to determine its application for administrative review within five working days. Based on the above findings, we conclude the first issue in the affirmative, that the disqualification of the appellant's tender was justified.

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

Considering the findings above, we hereby dismiss the appeal for lack of merit and order that each party shall bear its own 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 virtual presence of the appellant and physical presence of respondent on this 8th day of July 2026.

MS. FLORENTINA SUMAWE

....

Ag. CHAIRPERSON

MEMBERS: -

1. **DR. WILLIAM KAZUNGU** ....
2. **DR. GLADNESS SALEMA** ....