IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 10 OF 2026-2027

BETWEEN

M/S BOGETA ENGINEERING LIMITED........................APPELLANT

AND

MKURANGA DISTRICT COUNCIL..............................RESPONDENT

DECISION

CORAM

1. Ms. Florentina Sumawe - Ag. Chairperson
2. Eng. Lazaro Loshilaari - 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. Mr. John Bogomba - Managing Director
2. Mr. Francis Lawa - Director

FOR THE RESPONDENT

1. Mr. Noel Mangale - Ag. District Legal Officer
2. Mr. Mashaka Kipande - Head of Procurement Management Unit (HPMU)
3. Mr. Zuberi Abraham - Ag. District Treasurer

M/S Bogeta Engineering Limited (hereinafter referred to as **"the appellant"**) lodged this appeal against **Mkuranga District Council** (hereinafter referred to as **"the respondent"**) in relation to Tender No. 71B6/2025/2026/W/18 for the Proposed Construction of a Modern Conference Hall & Staff Offices for Secondary & Primary Education Departments to be built on Plot No. 1086 & 1087 Block A at Mkuranga Urban in Mkuranga District, Coast Region (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 through the National Competitive Tendering Method 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 29th June 2026, the respondent, through the National e-Procurement System of Tanzania (**NeST**), invited eligible tenderers to submit tenders. By the submission deadline of 6th July 2026, six tenders were received, including that of the appellant. The tenders were evaluated and the Evaluation Committee recommended award to M/S Bandiko Construction Company Ltd (hereinafter referred to as **"the proposed awardee"**).

On 17th July 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 Two Billion Eight Hundred

Ninety-Seven Million Eight Hundred Thirty-Seven Thousand Nine Hundred One Only (TZS 2,897,837,901.00), VAT Exclusive, with a completion period of 180 days. The Notice further stated that the appellant's tender was not considered for award for being non-responsive to the requirements of the tender document.

Dissatisfied with the reason for its disqualification, the appellant applied for administrative review on 19th July 2026. On 20th July 2026, the respondent rejected the complaint. Aggrieved further, the appellant lodged this appeal to the Appeals Authority on 23rd July 2026.

When the matter was called on for hearing the following issues were framed, 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 Mr. John Bogomba, the Managing Director. He contended that the respondent unlawfully and unfairly evaluated its tender contrary to the criteria set out in the tender document, thereby arriving at erroneous decision to disqualify its tender.

According to the notice of intention to award, the appellant's tender was disqualified for failure to comply with criteria relating to access to financial resources, Power of Attorney, average annual turnover and audited financial statements.

Regarding the access to financial resources criterion, Mr. Bogomba submitted that the appellant sufficiently demonstrated its financial capacity by submitting a line of credit from National Microfinance Bank (NMB) in the amount of TZS 1,500,000,000, a facility letter from CRDB Bank valued at TZS 728,506,954.95, two additional lines of credit issued by CRDB Bank, and a contract evidencing the availability of an overdraft facility. He argued that these documents adequately established the appellant's access to financial resources and its financial capability to perform the contract.

He further argued that despite submission of these documents, the respondent rejected them on the ground that they were addressed to other Institutions rather than to the respondent. He maintained that the tender document did not require such documents to be addressed specifically to the respondent, and if their authenticity was in doubt, the respondent ought to have sought clarification from the issuing banks.

Regarding the requirement for the submission of a Power of Attorney, Mr. Bogomba submitted that the appellant complied by submitting a Power of Attorney issued on 9th October 2021, which according to him, was duly executed by both the donor and the donee and attested by the Commissioner for Oath on 2nd July 2026, before the tender submission deadline of 6th July 2026. He contended that the Power of Attorney was valid and compliant with the tender requirements and therefore, the respondent acted improperly in rejecting it.

On the annual average turnover, Mr. Bogomba submitted that the appellant had declared an annual turnover of TZS 4,416,600,700.00 for the year 2023 and TZS 6,567,445,810.00 for the year 2024, with none being declared for the year 2025. Mr. Bogomba explained that the average annual turnover for three years amounted to TZS 3,661,348,836.67, exceeding the minimum requirement of TZS 1,000,000,000/- set out in the tender document. He therefore argued that the omission of the 2025 turnover figures should not have resulted in the appellant's disqualification. According to him the requirement was to demonstrate the prescribed average annual turnover within the specified period rather than to submit turnover figures for each of the three years.

Concerning the audited financial statement, Mr. Bogomba submitted that the tender document required submission of an audited financial statement for the period of 1st January 2023 to 31st December 2025. He argued that this wording required only one statement covering the whole period, not three separate annual statements. The appellant submitted audited financial statements for 2023 and 2024, leaving 2025 undeclared. He contended that if three consecutive statements were required, the tender document should have expressly stated so. According to him, disqualification on this ground was erroneous.

Finally, the appellant prayed for the following orders:

i. The respondent be ordered to re-instate the appellant's tender into the evaluation process and tenders be re-evaluated in accordance with the criteria provided in the tender document and award be made to it as it had the lowest quoted price.
ii. In the alternative, the tender be re-advertised after amending the tender document in relation to the audited financial statement criterion.

iii. The respondent be ordered to compensate the appellant the costs incurred as per the following breakdown:

- Appeal filing fee - TZS 500,000/-
- Transport - TZS 240,000/-
- Accommodation - TZS 300,000/-
- Meals - TZS 200,000/-
- Stationary costs - TZS 100,000/-

REPLY BY THE RESPONDENT

The respondent's submissions were made by Mr. Noel Mangale, Acting District Legal Officer. He stated that the tender document clearly outlined all compliance criteria, and the evaluation was conducted strictly in accordance with those requirements. Upon completion, the appellant's tender was found non-compliant with four criteria namely, access to financial resources, Power of Attorney, average annual turnover, and financial statements.

Regarding access to financial resources, Mr. Mangale stated that the tender document required proof of access to finances to the tune of TZS 1,000,000,000.00 to meet cash flow needs. He contended that the appellant submitted various documents, including line of credits, letters of comfort, and a facility letter. However, these were addressed to other organizations namely, International Organization for Migration (IOM), Ministry of Agriculture and Ministry of Transport, and not to the respondent. Consequently, the respondent could not verify the appellant's financial capability for the tender in dispute. Mr. Mangale cited PPAA Appeal Case No. 40 of 2025/2026, between ***M/S West Food Company***

Limited versus Songea District Council, where similar deficiencies justified disqualification. He therefore urged the Appeals Authority to apply the same principle when determining this appeal.

On the Power of Attorney, Mr. Mangale stated that the appellant submitted a Power of Attorney dated 9th October 2021, claiming that its general authority since then was still valid. Mr. Mangale argued that this was unacceptable, as the tender document required tenderers to submit a Special Power of Attorney issued after tender advertisement which was on 29th June 2026 and before the submission deadline, 6th July 2026. He contended that since the appellant's Power of Attorney was issued on 9th October 2021, the same did not meet this requirement, rendering its tender non-responsive.

Regarding the average annual turnover, Mr. Mangale submitted that tenderers were required to demonstrate an average annual turnover of TZS 1,000,000,000.00, commencing from 1st January 2023 to 31st December 2025. The appellant submitted the annual turnover data for 2023 and 2024 only, while omitting 2025 as required in the tender document. He averred that the appellant's failure in this regard contravened the tender requirements hence justifying its disqualification.

Concerning the audited financial statements, Mr. Mangale submitted that, the tender document required audited financial statements for three years, namely 2023, 2024 and 2025. The appellant submitted audited financial statements for only two years 2023 and 2024, admitting omission of 2025. Mr. Mangale maintained that this non-compliance further justified its disqualification.

In support of his submissions, Mr. Mangale relied on regulations 210(1), 211(2)(k), and 213(1) and (2) of the Regulations as well as clause 28.8(k) of the Instructions to Tenderers (ITT). He submitted that these provisions require the respondent to evaluate tenders strictly in accordance with the criteria set out in the tender document and that where a tenderer fails to submit a mandatory supporting document, its tender should be rejected, and should not subsequently be considered responsive through clarification, correction, or waiver of the deviation.

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

i) A declaration that the respondent's decision to award the tender to the proposed awardee is lawful and justified.
ii) Dismissal of the appeal for lack of merit with costs.
iii) An order dismissing the appellant's prayers for costs.

REJOINDER BY THE APPELLANT

In rejoinder, Mr. Bogomba reiterated the appellant's submissions in chief on all four grounds of disqualification. He argued that regarding access to financial resources criterion, the tender document did not expressly require lines of credit or comfort letters to be addressed to the respondent. In the absence of such a specific requirement, tenderers should not be penalized for submitting documents they believed demonstrated their financial capacity. He therefore maintained that the appellant's disqualification was unfair and unjust. Regarding the respondent's prayers, Mr. Bogomba submitted that they should be rejected in entirety, and the appellant's prayers be granted as prayed.

ANALYSIS BY THE APPEALS AUTHORITY

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

In determining this issue, the Appeals Authority considered parties' contentions. The appellant disputes its disqualification from the tender process for failure to comply with four mandatory requirements: average annual turnover, Power of Attorney, access to financial resources and audited financial statements.

On the other hand, the respondent rebutted the appellant's assertion by arguing that the appellant was fairly disqualified as the submitted documents were non-responsive to the requirements provided in the tender document.

To ascertain whether the disqualification of the appellant's tender on the mentioned criteria was justified, the Appeals Authority examined each of them hereunder:

i. Average Annual Turnover

We reviewed Section IV Qualification and Evaluation Criteria, item 3 Financial Situation and Performance (second bullet) which reads as follows:

> "***Average Annual Turnover (SCORE: Comply/Not Comply to specified minimum requirements)***
>
> *Average Annual Turnover of the mentioned amount, calculated as total certified payments received for contracts in progress and/or completed within the mentioned duration. (In case of Joint Venture,*

compliance requirements are: All Parties Combined – Must Meet requirements, Each Member – Must Meet percentage requirements and if One Member – Must Meet percentage requirements stated).

Average Annual Turnover Amount in TZS or any other freely convertible currency	*1000000000*
Turnover Start Date	*2023-01-01*
Turnover End Date	*2025-12-31"*

The item required tenderers to demonstrate their average annual turnover of not less than Tanzania Shillings One Billion (TZS 1,000,000,000/-), assessed within the period of 1st January 2023 to 31st December 2025.

To verify the appellant's compliance with this criterion, we reviewed its tender submitted in NeST and observed that it indicated an annual turnover of Tanzania Shillings Four Billion Four Hundred Sixteen Million Six Hundred Thousand Seven Hundred (TZS 4,416,600,700) for the year 2023 and Tanzania Shillings Six Billion Five Hundred Sixty-Seven Million Four Hundred Forty-Five Thousand Eight Hundred Ten (TZS 6,567,445,810) for the year 2024, with an average of TZS 5,492,023,255. Based on these figures, the Appeals Authority computed the average annual turnover for three years and found it to be TZS 3,661,348,836.67, well above the required threshold of TZS 1,000,000,000/- specified in the tender document.

The Appeals Authority concurs with the appellant that compliance with this criterion did not require submission of turnover for all three years, provided the computed average exceeded the minimum threshold. Accordingly, the appellant met the requirement, and its disqualification on this ground was unjustified.

ii. Power of Attorney

We reviewed Section IV Qualification and Evaluation Criteria, item 2 Standard Tender Forms (second bullet) which reads as follows:

> "*2. Standard Tender Forms*
>
> *Notarized Special Power of Attorney (SCORE: Comply/Not Comply to specified minimum requirements)*
>
> ***Tenderers must fill in Standard Power of Attorney as per the required format and upload into the system."***
>
> [Emphasis added]

This item required tenderers to submit a notarized Special Power of Attorney duly completed in accordance with the prescribed format. Upon examining the Power of Attorney uploaded by the appellant in NeST, the Appeals Authority observed an inconsistency regarding the date of its issuance. Specifically, the introductory paragraph which states that the Power of Attorney was issued on 9th October 2021, whereas the execution clause indicates that it was signed and delivered by both the donor and the donee on 2nd July 2026. A Special Power of Attorney must be issued specifically for the tender in dispute, which was advertised by the respondent on 29th June 2026 with a submission deadline of 6th July 2026.

We do not accept the appellant's contention that the 2nd July 2026 attestation cured the defect or rendered the Power of Attorney specific to the tender in dispute. An attestation, by its nature, is a certification that the facts and signatures recited in a document are true and were made as stated. It does not alter the substance, date of issuance, or scope of the underlying instrument. In the present case, the attestation of 2nd July 2026 merely confirmed and re-affirmed the fact that the Power of Attorney had been issued on 9th October 2021, it did not constitute a fresh grant of authority, nor did it convert the instrument into one issued for the purposes of the tender under appeal. The date of issuance is material to this criterion therefore remains 9th October 2021, which is well before the tender was advertised on 29th June 2026.

The Appeals Authority therefore finds that the appellant failed to comply with this mandatory requirement, and its disqualification on this ground was justified.

iii. Access to Financial resources

We reviewed Section IV Qualification and Evaluation Criteria, item 3 Financial Situation and Performance (third bullet) which reads as follows:

> ***"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 the case of a Joint Venture, compliance requirements are all Parties Combined – Must Meet requirements).*

Average fund amount from all sources (any freely convertible currency proposed by bidder)	***1000000000"***

[Emphasis added]

This item required tenderers to demonstrate their ability to access adequate financial resources to meet the cash flow requirements of both current and future contracts. It also specified the required minimum threshold of Tanzania Shillings One Billion only (TZS 1,000,000,000).

To substantiate if the appellant complied with this requirement, we examined its tender submitted in NeST and observed that under the slot of access to sources of fund it attached the following documents:

a) A letter of line of credit dated 3rd July 2024, issued by the National Microfinance Bank (NMB), addressed to the Head of the Procurement Management Unit - International Organization for Migration (IOM). It confirmed the availability of a credit facility of Tanzania Shillings One Billion Five Hundred Million (TZS 1,500,000,000) in support of Tender No. KSL/IOM/253/24 for the Proposed Construction of the Immigration District Office, Busega District, in Simiyu Region.

b) A letter of a line of credit dated 30th May 2025 issued by CRDB Bank Plc, addressed to the Chief Executive Officer - Ministry of Agriculture. It confirmed the availability of credit support to the appellant for the proposed construction of warehouses at Kilimi Seeds Farms.

c) A letter of a line of credit dated 30th May 2025 issued by CRDB Bank Plc, addressed to the Director General - Ministry of Transport. It confirmed the availability of credit support to the appellant for the proposed renovation of Bandari House and construction of perimeter at Plot No. 24/KB-XVI at Tanga.

d) A line of credit dated 3rd July 2024 with the value of Tanzania Shillings One Billion Two Hundred Million Only (TZS 1,200,000,000) from CRDB Bank Plc, addressed to the Head of Procurement - International Organization for Migration (IOM) in support of Tender No. KSL/OIM/253/24 for the Proposed Construction of the Immigration District Office, Busega District, in Simiyu Region.

After reviewing the above-listed letters of credit, we observed that each was addressed to different procuring entities: the International Organization for Migration (IOM), the Ministry of Agriculture, and the Ministry of Transport. Further, they were issued in relation to unrelated projects prior to the advertisement of the tender in dispute. Accordingly, we find that these documents were not specific to the tender under consideration and therefore, did not satisfy the tender requirement.

We considered the appellant's contention that the tender document did not expressly require tenderers, when demonstrating their access to financial resources, to address the required documents to the respondent. Hence, imposing such a requirement during evaluation process was contrary to the law. We disagree with this contention since the purpose of having a criterion on access to financial resources was to enable the respondent to verify if the appellant has adequate financial resources, or reliable access thereto to execute the specific project under the tender in dispute. This criterion could not be substantiated through lines of credit issued to other procuring entities for unrelated projects, as such documents neither demonstrated the availability of funds for the tender under appeal nor assured the respondent that the appellant had the financial capacity to perform the contract.

Accordingly, the Appeals Authority finds the appellant to have failed to comply with access to financial resources criterion and its disqualification on this ground was justified.

iv. Audited Financial Statement

We reviewed Section IV Qualification and Evaluation Criteria, item 3 Financial Situation and Performance (first bullet) which reads as follows:

> *"3. **Financial Situation and Performance***
>
> ***Financial Statement (SCORE: Comply/Not Comply to specified minimum requirements)***
>
> *Audited balance sheets or, if not required by the laws of the Tenderer's country, other financial*

statements acceptable to the PE, ***for mentioned duration shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.*** *(In case of Joint Venture, compliance requirements are: Each Member – Must Meet requirements).*

Financial Statement Start Date	*2023-01-01*
Financial Statement End Date	*2025-12-31"*

The item required tenderers to submit audited financial statements from 1st January 2023 to 31st December 2025 to facilitate the determination of the tenderer's current financial soundness position and its prospective long-term profitability.

To ascertain whether the appellant complied with this criterion, we reviewed its tender submitted through the NeST. Our review revealed that, in the slot requiring tenderers to submit three years audited financial statements, the appellant attached audited financial statements for the years ending 31st December 2023 and 31st December 2024 only. It did not submit audited financial statement for the financial year ending 31st December, 2025 which is contrary to the tender document that requires tenderers to submit audited financial statements for three years namely 2023, 2024 and 2025.

We considered the appellant's contention that the tender document required the submission of only one audited financial statement covering a three-year period and that had the respondent intended tenderers to submit three separate audited financial statements, it would have expressly stated so in the tender document.

We are unable to agree with this contention as Section IV – Qualification and Evaluation Criteria, Item 3 (Financial Situation and Performance), particularly the first bullet, indicates clearly that the requirement was for audited financial statements covering the three-year period from 1st January 2023 to 31st December 2025. The mere use of the singular term "financial statement" does not imply that tenderers were required to submit a single consolidated statement for the entire period. Rather, the requirement was intended to enable the respondent to assess the tenderer's financial performance throughout the specified three financial years, and this could only be achieved through the submission of the audited financial statements for each of those years.

Therefore, we find the appellant to have failed to comply with audited financial statement criterion for not submitting the audited financial statement for the year 2025.

We revisited regulations 211 (2) (k) and 213(2) of the Regulations which read 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 as 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 stipulate that failure to submit major supporting documents justifies rejection of a tender, and a non-responsive tender cannot subsequently be made responsive by correction or withdrawal of the deviation.

Applying the above provisions to the facts of this appeal, we find that the appellant failed to comply with the mandatory qualification requirements of the tender concerning the lines of credit, the Power of Attorney and audited financial statements. We are therefore satisfied that the respondent's decision to disqualify the appellant's tender was justified and in compliance with regulations 211(2)(k) and 213(2) of the Regulations.

Accordingly, 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?

Taking cognizance of the above findings, we hereby dismiss the Appeal for lack of merit. The respondent is allowed to proceed with the tender process in compliance with the law. We make no order as to costs.

It is so ordered.

This decision is binding and can be enforced in accordance with section 121(7) of the Act.

The Right of Judicial Review as per section 125 of the Act is explained to the parties.

This decision is delivered in the physical presence of the appellant and virtual presence of the respondent this 7th day of August 2026.

MS. FLORENTINA SUMAWE

....

Ag. CHAIRPERSON

MEMBERS: -

1. **ENG. LAZARO LOSHILAARI** ....
2. **MR. RAPHAEL MAGANGA**..