

**PROCURING ENTITIES' PRACTICE IN AWARDING PUBLIC
CONSTRUCTION CONTRACTS**

An Exposition from Contractors' Appeals in Tanzania

Nyaswa Kalomo Machibya

**MSc. (Construction Economics and Management) Dissertation
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CONSTRUCTION CONTRACTS**

An Exposition from Contractors' Appeals in Tanzania

By

Nyaswa Kalomo Machibya

**A Dissertation Submitted in (Partial) Fulfillment of the Requirements for
Degree of Master of Science (Construction Economics and
Management) of Ardhi University**

Ardhi University

February, 2021

CERTIFICATION

The undersigned certify that he has read and hereby recommends for examination a dissertation entitled; *Procuring Entities' Practice in Awarding Public Construction Contracts; An Exposition from Contractors' Appeals in Tanzania* in fulfillment of the requirements for the degree of Master of Science in **(Construction Economics and Management)** of Ardhi University.

Dr. Khalfan Amour Khalfan

(Supervisor)

Date: _____

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I, **Nyaswa Kalomo Machibya**, declare that this dissertation is my original work, and to the best of my knowledge, it has not been presented and will not be presented to any other University for similar or any other degree award.

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DEDICATION

To my Father and my Mother,

To my husband Leonard, and my son Franklin.

I love you all.

ACKNOWLEDGEMENTS

I express my sincere gratitude to individuals and groups who assisted in one way or another in accomplishing this dissertation report. First and foremost, to the Almighty God for his divine grace and opportunity of undertaking this Master's degree programme. It is through God's love and mercy which made this vital task possible.

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However, I am fully responsible for all errors, omissions, and mistakes that may appear in this document.

ABSTRACT

Procuring Entities' practices in awarding Public Construction Contracts are subject to petitions if they do not comply with the Act and Regulations. The tendering stage is one of the public procurement stages which is susceptible to appeals because, it is at this stage where dissatisfied Contractors who participated are allowed to appeal against Procuring Entities. Appeals in public procurement contract award demonstrate a fair system aggrieved party can petition. However, the existence of appeals may be an indicative of inadequate procurement practices by Procuring Entities'.

Researchers have underscored the importance of integrity, transparency, accountability, fairness, and equality to competition in the field of public procurement. The matter of rights in the Contractor's selection and compliance with the Act and Regulations has also been addressed. Nevertheless, there is limited knowledge of what contractors' appeal against, and their genuine reasons. These indicate that, how the Act and Regulations are used sometimes breached, and or violated are unexamined. Therefore, this study aimed at filling this gap by identifying the nature of the contractor's appeal cases, the arguments that support their appeals, and examining the Procuring Entities' potential violations of the Act and Regulations.

Data used in this study were collected from published appeal cases by the Public Procurement Appeals Authority before subjected to qualitative data analysis techniques. NVivo 12 plus software and Microsoft Excel aided the data management and analysis process. The findings show that contractors appeal against Procuring Entities violations of the Public Procurement Act, Regulations, Rules, and Guidelines through misinterpretation, use of defective and unapproved standard documents, unethical conduct, and omissions in decision-making while handling public procurement. The study found the severity of Public Procurement Act and Regulations violation practices in preparing tender documents, conducting tender evaluations, the applicability of preference schemes, and decision making.

The study recommended that to minimize the prevalence of appeals in public procurement contract awards, Procuring Entities shall abide with the requirements of the Act, Regulations. Procedures for appointing tender evaluation committee members and Penalties provided in the Act for convicted officers of the PEs shall be reviewed and . Nonetheless, Public Procurement Regulatory Authority shall prepare and issue authorized Standard Tender Documents for the procurement of works exclusive reserved for local contractors.

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**ABBREVIATIONS, ACRONYMS, AND DEFINITIONS OF KEYWORDS AND
TECHNICAL TERMS**

AO	Accounting Officer
APER	Annual Performance Evaluation Report
BDS	Bid Data Sheet
BOQ	Bills of Quantities
CAG	Controller and Auditor General
DAWASA	Dar Es Salaam Water Supply and Sanitation Authority
EA/PA	Executive Agencies/Public Authority
EOT	Expression of Interest
EPC	Engineering Procurement and Construction
EWURA	Energy and Water Utilities Regulatory Authority
ICT	Information Communication Technology
IFT	Invitation for Tenders
JV	Joint Venture
LGA's	Local Government Authorities
MEP	Mechanical Engineering Project
MUWASA	Mpanda Urban water supply and Sanitation Authority
MWAUWASA	Mwanza Urban Water supply and Sanitation Authority
NAO	National Audit Office
PCCB	Prevention and Combating of Corruption Bureau
PE	Procuring Entity
PMU	Procurement Management Unit
POs	Parastatal Organizations
PPA	Public Procurement Act
PPAA	Public Procurement Appeals Authority
PPR	Public Procurement Regulations
PPRA	Public Procurement Regulatory Authority
REA	Rural Energy Agency
RFT	Request for Tenders
STD	Standard Tender Documents
TAA	Tanzania Airports Authority
TANROADS	Tanzania National Roads Agency
TARURA	Tanzania Rural and Urban Roads Agency

TB	Tender Board
TPA	Tanzania Ports Authority
UN	United Nations
VAT	Value Added Tax

Definitions of Keywords and Technical Terms of the Research Topic

(i) **Complaint**

A formal statement filed to a competent authority that there is a legal cause to express grief about the way the Contractor has been treated;

(ii) **Tenderer**

Contractor (s) participating or intending to participate in procurement proceedings to submit a tender in order to conclude a contract.

(iii) **Public Procurement**

A process of purchasing goods, works, or consultancy and non-consultancy services by public entities, government agencies, and departments as required by the Public Procurement Act and its regulations.

(iv) **Public Procurement Appeals Authority**

An independent Appeals Authority established under section 88 of the PPA, 2011, to provide an independent avenue through which aggrieved tenderers could submit their complaints where it was felt they had been unfairly treated when participating in the public procurement process.

(v) **Procuring Entity**

A public body and any other body or unit established and mandated by the government to carry out public functions.

(vi) **Accounting Officer**

A Government officer appointed under the provisions of the Public Finance Act or a public officer statutorily appointed to hold a vote or subvention and accounts for all monies expended from that vote or subvention;

CHAPTER ONE

INTRODUCTION AND PROBLEM SETTING

1.1 Background of the Study

The Public Procurement of works, goods, services, and disposal of public assets by tender in Tanzania is governed by remarkable legal frameworks, rules, and regulations. This framework, referred to as “Public Procurement Instruments,” regulates the purchase of goods, works, consultancy services, non- consultancy services and disposal of public assets by tender in government departments, units, authorities, and agencies in sectors of health, education, agriculture, communication infrastructures, defense, and national security organs. It further regulates the procurement proceedings of non-Government Entities for procurement financed from specific public finances.

The public procurement framework evolved from Public procurement through the Government Stores Department, Medical Stores Department, Veterinary Stores Department, Maji Stores Department, Government Press, and Contractors' procurement through approval from tender boards. Later, there was a need to regulate all public procurement through one legal framework as a result of the enactment of the Public Procurement Act No.3 of 2001, which was repealed and replaced by the Public Procurement Act No.21 of 2004. This Act's essence was to ensure that there is integrity, transparency, fair competition, and no discrimination actions in public procurement to achieve the best value for money in terms of economic, efficiency, and effectiveness.

The Public Procurement Act No. 21 of 2004, in its nine years under implementation, proved several challenges. The challenges identified by Stephano, (2013) were Local Government Authorities' failure to adhere to the Public Procurement Act No. 21 of 2004. The challenges were contributed by; lack of capacity in terms of personnel and equipment facilities, failure of the Act to address how specialist works to be incorporated in the main works (i.e., domestic and nominated subcontracting). Another challenge was the dual responsibility of the PPRA as was provided in the Act section 7(q), which gave the Authority the mandate to be an oversight body of the public procurement processes. At the same time, section 7(o) gave the Authority the power to handle procurement complaints from aggrieved tenderers. These challenges lead to public outcry about inefficiencies (Maliganya, 2015) and failure to achieve value for money in the public procurement processes. Consequently, in 2011, the Public Procurement Act No.

21 of 2004 was also repealed and replaced by a Public Procurement Act No. 7 of 2011, which came into operation on 20th December 2013.

The Public Procurement Act, 2011, the Public Procurement Regulations, (2013), and their 2016 amendments provide the guidelines on what is required to be done regarding public fund expenditure on procurement and how the Public Procurement processes are to be done in complying with the requirement of the law. To ensure that the public procurement objectives are met, institutions like the Public Procurement Regulatory Authority were formed to oversee and regulate all matters relating to public procurement processes. The primary aim is to ensure that all public procurement systems apply a fair competition, transparent, non –discriminatory, and value for money procurement standards and practices. The goal of fair competition requires Procuring Entities to allow all willing and eligible bidders to participate in a tender and to treat similar bids similarly and impartially in accordance with the pre-communicated objectives and quantifiable criteria (Thiankalou, 2011).

In the procurement of public works by Procuring Entities', different tendering methods are allowed to be used depending on the nature and type of works or services to be procured. Therefore, the standard open tendering procedures in the Public Procurement Act, 2011 are International Competitive Tendering, National Competitive Tendering, and Restricted Tendering methods. Besides, Regulations 150, 151, and 152 of the GN. No. 446/2013 were amended to include the following amendments. First, modifications of Regulations 150 and 151 to have the procurement of non-consultancy services instead of “services,” second, the addition of regulation 151A to cater for national, international, and restricted competitive tendering on fixed budget; and lastly, amendment of Regulation 152 to recognize “Special Groups” participation in the public procurement processes.

The suitable applicability and limitations of each tendering method are also provided in the PPA, 2011 and Regulations, 2013 as amended. During the preparation of solicitation documents, PE's are required to use STD, issued and authorized by PPRA. Furthermore, solicitation documents shall describe the procurement method to be used, the eligibility and evaluation criteria of Contractors.

On the other hand, for the fair examination, evaluation, and comparison of submitted tenders either through Pre-qualification or Post- qualifications, the qualification and selection criteria

shall be made known to, and apply equally to all tenderers. The Procuring Entity also shall impose no discriminatory measures, requirements, or procedures concerning any tenderer's qualifications. For Clarity, Section 51(4) of the Act reads, “...*Any qualification criteria shall be made known to, and apply equally to all tenderers and a procuring entity shall impose no discriminatory criteria, requirement or procedure with respect to the qualifications of any tender*”.

In order to achieve the purpose of these requirements of the Act, the Public Procurement Regulatory Authority is empowered by the Public Procurement Act, 2011, Section 9(1) c to prepare, update and issue authorized versions of the standardized tendering documents, procedural forms, guidelines and any other to be used in procurement of contractors or suppliers by public entities. For example, Standard Tendering Documents (STD) for Procurement of Medium and Large Works: National and International Competitive Tendering, Procurement of Works- Subcontracts: National Competitive Tendering of December 2018, etc. During the tendering process, tenderers expect that the Procuring Entity will evaluate their tenders following the required criteria and procedures set in the tender document and treat all tenderers equally, fairly, and without discrimination.

Different public procurement legislations provide that any tenderer who is aggrieved or not satisfied with the tendering process to refer the matter in a complaint or dissatisfied with. The legislation requires that when bidders or potential bidders notice flaws in the procurement process, they should file a complaint and receive a decision promptly (World Bank, 2017).

In Sweden and other European member states, the legislation on public procurement allows aggrieved tenderers to complain before the courts. Condition fulfilled that the complaint is to be brought against the procuring authority once the award decision had been made but not after the contract had been signed (Carlsson and Astrom, 2008).

In Ghana, appeals and complaints on procurement decisions are lodged at any stage of the contract procurement. That is, before or after the contract enters into force to the head of the procuring authority, or the Appeals Authority (Ameyaw, Mensah and Osei-Tutu, 2012). In Tanzania, the Public Procurement Act, 2011 provides a two-tier appeal mechanism for handling complaints. These are the administrative review by the head of the procuring entity as per Sect. 96 of the Act, and Regulation 105 and 106, and administrative review by the Appeals Authority as per Sect. 97 of the Act; Regulation 107.

The Procedure for filling a complaint under PPA, 2011 has the hierarchy that; First. Tendering complaint is to be filed to the Accounting Officer of the Procuring Entity within Seven (7) working days of the tenderer becoming or should have become aware of the circumstances giving rise to the complaint or dispute. The complainant shall serve a copy of the objections to the Public Procurement Regulatory Authority. The AO is required by Reg. 106(5) to issue a written decision within 7 working days after receipt of the Complaint. When the AO does not issue a written decision and or the bidder is not satisfied with the decision of the Accounting Officer, the matter should be referred to the PPAA for review and administrative decision within Seven (7) working days from the date when the tenderer received the decision of the accounting officer.

On the other hand, the complaint by the aggrieved tenderer can be filled directly to the PPAA if the complaint or dispute cannot be entertained under Section 96 of the PPA, 2011 because of entry into force of the procurement or disposal contract. And provided that the complaint or dispute is submitted within seven working days from the date of when the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or the time when that tenderer should have become aware of those circumstances (ref. Section 97(3) of the Act). Lastly, if the tenderer or the Procuring Entity is aggrieved with the decision of the PPAA, may, within fourteen days of the delivery of such decision, apply to the high court for judicial review.

Various reports and publications have been made concerning bidders' unfair treatment and misconduct in the tendering process in Tanzania public procurement proceedings. For example, the Annual Performance Evaluation Reports issued by Public Procurement Regulatory Authority for financial years 2013/2014, 2014/2015, 2015/2016, respectively, reported that Contractors' procurement appeal cases were referred to PPRA and PPAA for administrative review and decision regarding unfair tendering procedures by tenderers. The Contractor's complaints were based on the following grounds; decisions of heads of PEs to award tenders to unqualified and non-responsive bidders, non-adherence to evaluation criteria set in the tender document, flawed evaluation of tenders (NAO, 2015; PPRA, 2017), and or floating tender with inadequate specifications and details which renders difficulties in preparing competitive and responsive bids.

Other unfair tender practices include the inclusion of discriminatory requirements in the tender documents, rejection of all tenders without any justifiable reasons (NAO, 2015). Other reasons for appeals in the tender award process include failure of the heads of procuring entities to handle complaints within the time limit and or omissions in the AO decisions.

Unfair tendering selection practices in public procurement in Tanzania have also been spotted to emanate from the following areas, as pointed out by PPRA, (2018) in their Annual Performance Evaluation Report for financial year 2017/2018. First, on PE's failure to evaluate tenders according to the tender document's criteria, and Second, improper floating of tenders for acquiring contractors and awarding tenders to unqualified Contractors. Mamiro, (2010) added that there are also problems of PE's attempting to modify mandatory (legal) provisions through the solicitation documents or evaluation teams using criteria other than those stipulated in the solicitation documents and inadequate procurement competence in public procurement.

The impacts of these tender unfair treatment and malpractices have resulted in the loss of government funds due to awarding tenders to incapable tenderers who, in turn, fail to deliver works on time at the required quality and reasonable costs. On the other hand, it cost government funds for payment of legal fees to private law firms by the office of the Attorney General's Chamber (NAO, 2019) and unnecessary costs due to inappropriate and biased decisions during the evaluation of bids.

Lastly, they lead to the procurement process's overall delays when it is suspended pending administrative review, or the procurement process ordered to be re-tendered afresh. For example, in the Controller and Auditor General report, TPA was ordered by the PPAA to pay the appellant a sum of TZS 40,000,000.00 as compensation as there was no other recourse (NAO, 2015). On the other hand, unfair tendering practices have implications (in terms of cost and time) to both parties. It consumes time when the procurement process is suspended to pave the matter's determination process in complaint or dispute. It takes the PE cost, which is usually the respondent, to pay for the legal fees and other appeal case response requirements.

While the Act requires the tenderer, who feels aggrieved, discriminated, or not satisfied with the tendering process to refer the matter for administrative review and decision by either the Accounting Officer or PPAA. Issues to be appealed against according to PPAA rules must lie in the following areas: -

- (i) Acceptance or rejection of a tender.
- (ii) Award or Proposed award of a contract.
- (iii) Inclusion of an unacceptable provision in the tender document,
- (iv) Unacceptable tender process.
- (v) The decision, Act or Omission of the AO of the PE or Reviewing Authority,
- (vi) Failure or refusal to make a decision within the time limit and,
- (vii) Blacklisting resulting from the tender process.

The primary essence of tendering in public procurement is to ensure that the selection of a particular contractor, supplier, or service provider is conducted in a fair competition, transparency manner, and without discriminatory actions so that the public funds are used in the most efficient, economical ways to achieve value for money. The above essence can be achieved by expecting that; the tendering method used, tender documents, guidelines, and evaluation exercise of the submitted tenders comply with the approved standard tender guidelines and the evaluation criteria pre- communicated in the tender document.

The STDs, procedures used in the tendering process, the pre-communicated selection and evaluation criteria incorporated in the tender document issued provide a platform for equal judgment and selecting the most economically responsive tender between competing bidders. In Tanzania, PEs are required to use standard bidding documents and evaluation guidelines issued by PPRA during solicitation of proposals or invitation to tenders and standard evaluation guidelines in the evaluation process.

On the other hand, PE's are allowed to custom these standard bidding documents in order to suit their procurement needs. This is done while ensuring that the provisions of the PPA, 2011, and Regulation, 2013 are not compromised. Furthermore, during the tendering process, all PE's are required to observe the principles of public procurement; that is, equality of participation, transparency, effectiveness, and fairness.

When these principles are skewed either by using discriminatory evaluation criteria, modifying (legal) mandatory provisions (Mamiro, 2010) in the standard tender documents, and or by using a tendering document which infringes the rights of the tenderer; aggrieved tenderers are allowed by the Act to seek for an administrative review to the Accounting Officer of the procuring entity, and or to the PPAA for determination and decision.

1.2 Statement of the Research Problem

There have been outcries from tenderers, mostly contractors who participate in public procurement proceedings in Tanzania, that there are biases and unequal treatments during tender selection and evaluation by PE's (Njila, 2017). Among these practices' outcomes is the unfair disqualification of potential tenderers whose tenders are likely to offer economical, effective, and competitive prices if they would have been fairly evaluated. Records of these cries and complaints are justified and validated by the number of appeal cases in the web archives of PPAA.

For example, a simple survey of appeal cases to PPAA on tenders related to works for years 2015 -2016 reveals severe flaws in the tender selection and evaluation in the following appeal cases, to mention a few. First, appeal cases nos. 23, 24 and 25 of 2015-2016, whereby PPAA ordered the PE to re-start the evaluation process by using an independent evaluation team to exclude members involved in the first and second evaluations. Secondly, the appeal case no. 27 of 2015 -2016 whereby the PE was ordered to re-start the tender process to eligible tenderers only.

Thirdly, the appeal case no.31 of 2015-2016, which was under WB procurement procedures, PPAA observed irregularities and flaws in the tender evaluation process but due to the application of Section 4(1)(b) of the Public Procurement Act which says that “.....*any grant agreement entered into by the government with an inter-governmental or international financing institution in which the government is the beneficiary, the requirements of such sub-treaty or agreement shall prevail, but in all other aspects, the procurement shall be governed by this Act,*” therefore, PPAA lacked the power to issue a decision to nullify the award.

Other records of the complaints by tenderers on unfair tender selection practices are found in published annual performance audit and evaluation reports issued by PPRA, performance audit reports by NAO and Tanzania Procurement Journal (TPJ). The complaints mainly are based on unfair disqualification of tenderers due to failure by PE's evaluation committees to equally and fairly evaluate tenders based on the evaluation criteria stated in the tender documents. Other reasons include unfair disqualification through using ambiguous and discriminatory selection criteria in the tender documents contrary to the Act and Regulations (Ref. Appeal Cases No.23, 24 & 25, 2016).

These unfair disqualifications of tenderers have negative impacts on the procurement process itself and the government. Consequently, the selection of incompetent Contractors who, in turn, fail to discharge the procurement contract as required by the Act. Furthermore, it can lead to government loss by contracting defective and inefficient tender, which render the successful bidder perform the contract at a higher price. Additionally, it can lead to an overall delay to the procurement process when the tender is ordered by PPAA to re-start the evaluation process and or nullify the tender award and re-start the tender process in observance of the law.

Different scholars have researched on unfair tendering processes, tenderer's appeals to competent authorities, and decisions issued in public procurement. Patras (2016), identified that the Contract award stage is one of the risky stages of projects implementation financed with European funds in Romania. Because of the too dense and interpretable legislative framework and the involvement of many stakeholders, lack of expertise manifested in the field, and complaints that seriously affect the duration of the project implementation. In Sweden and European countries, Carlsson and Astrom (2008), in their research, found that a large number of procurement complaints appealed to court were explicitly concerned with the evaluation stage of the procurement process.

Furthermore, the grievances are based on flawed evaluation models or criteria for qualification. Others are based on a lack of transparency and professionalism in handling the procurement process by contracting authorities. In their conclusion, Carlsson and Astrom (2008) posited that some of the most procurement litigious issues in Sweden are flawed Request for Tenders (RFT), inconsistent Request for tenders, award evaluation criteria, a lack of clarity in the Request for Tender and or the procurement process.

In Ghana, Osei-Tutu, Ameyaw, and Mensah (2011) researched the compliance practices with the Public Procurement Act (Act 663) and found a low compliance level to Act 663 in public entities. To improve compliance level to Act 663, their research recommended recruiting procurement personnel and organizing intensive and regular procurement training for the personnel handling the public procurement process.

Njila (2017) found that there are unfair tendering selection procedures of contractors at the pre-contract stage of procurement of public works in Tanzania, whereby PEs fails to abide by the PPA, 2011, and PPR, 2013. The records from the filed appeal cases at PPAA archives show

the complaints by tenderers on unfair disqualification based on flawed evaluation practices and the application of ambiguous and controversial clauses in the tender documents (Appeal case no. 9 of 2016 -2017). NAO (2015) and PPRA (2017), in their public procurement performance audits, reveal non-adherence to evaluation criteria set in the tender documents and inclusion of discriminatory selection requirements in the tender document as among the irregularities observed in public procurement compliance.

The complaints on unfair tender selection in public procurement are grounded either on the Procuring Entities practices during tendering or weaknesses in the standard bidding documents and guidelines used in the tendering process. However, legal bidding documents and guidelines pass through different reviews before being approved for application, and they are continuously updated annually. Therefore, their contribution to these complaints, even if they exist, are insignificant.

On the other hand, Procuring Entities constitute multi stakeholder's involvement from procurement planning to contract award. The multi-stakeholder involvement can be looked into in detail to see their stake in the existence of these complaints. The following aspects are attributed to the inspiration in this research. First, the engagements and roles played by PEs in managing the public procurement process from the planning stage to the award of contract. Second, the PE's involvement in customizing the non-mandatory clauses in the standard tender document by inserting qualification and evaluation criteria to suit their needs in obtaining eligible tenderers, to examine the loopholes leading to these unfair tender selections.

Therefore, this research perceives the current problems of tenderer's complaints and appeals in the public procurement contract award process are related to the roles and actions of the PE's. As agents required by the Act to apply fair, competitive methods, equality, transparency, and non-discriminatory procedures while selecting the most efficient, economic, and responsive tender for spending public funds is under-researched. Consequently, the research focused on examining the practices of PEs, which are questionable by tenderers in awarding public construction contracts.

1.3 Research Objectives

1.3.1 Main Objective

This study's main objective is to analyze the appeal cases to understand practices by Procuring Entities that have led to appealed tender awards from contractors.

1.3.2 Specific Objectives

Specifically, this study aims to: -

- (i) To identify the nature of the appeal cases to unveil the Contractor's arguments in the appeal cases.
- (ii) To examine the Procuring Entities' violations of the Public Procurement Act and Regulations.
- (iii) To suggest ways that can minimize the number of contractors appeals in future tenders.

1.4 Research Questions

The main research question is, what are the PE's practices that led to Contractors' appeals? What are the reflections of these appeals with the overall provisions and requirements of the PPA and its Regulations?

In an attempt to fulfill the study's objectives, the following specific questions have been addressed: -

- (i) Which PE practices prompted the Contractors to lodge appeals in public procurement? What are the arguments supporting their appeals?
- (ii) Which provisions of the PPA and Regulations are violated by PEs? Why and how violations occur?
- (iii) What should be done to minimize the prevalence of tender award appeals in public procurement?

1.5 Significance of the Research

The findings of this research are relevant in the following areas. First, they contribute understanding to the body of knowledge to public procurement stakeholders (PEs, Tenderers, Procurement specialists, and Consultants) about the PE's practices inherent in public procurement, which lead to complaints and disputes. Second, the findings will be used by all PEs in public procurement to act diligently and professionally while maintaining their integrity

in public tendering proceedings. And third, the results of this study will be used by other scholars in public procurement and construction in general.

1.6 Scope of the Research

The study covers only formal complaints that appeal to the Public Procurement Appeals Authority by Works Contractors who were involved in the tendering process of public works for the past six years (2014/2015 – 2019/2020). The appeal cases are those whose decisions have been concluded by the Public Procurement Appeals Authority and are available to the public.

1.7 Limitation of the Research

The study has a limitation as it reviewed only appeal cases related to public procurement of works filed between 2014/2015 and 2019/2020. The nature of the research is a review and explanatory with empirical analysis to support the discussion. It is limited to only 59 appeal cases; therefore, the results cannot be generalized on a broader context of the Procuring Entities practice in public procurement in Tanzania.

1.8 Structure of the Research Report

This dissertation report has a total of five chapters. The first chapter introduces the background of the research. Chapter two presents the literature review on relevant theories and other public procurement studies, tendering procedures, and appeals against procuring entities in public procurement tendering. Chapter Three presents the research methodology, while Chapter Four presents the data analysis, findings, and discussion of results according to the research objectives. Chapter Five presents the conclusions drawn from research findings, recommendations, and areas for further studies.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

The literature review chapter provides various concepts and theories that enhance the researcher's theoretical understanding of the Procuring Entities' Practices in awarding Public Construction Contracts in Tanzania. The aim is to explain the practices by procuring entities in the award of public contracts and the influence of those practices on the tender award appeals by Contractors. In particular, this chapter starts presenting an overview of the public procurement principles and objectives, public procurement handling instruments, and the right to appeal by contractors. Lastly, the theoretical and conceptual framework of the study is presented.

2.1 Public Procurement Guiding Principles and Objectives

Public Procurement Principles set the framework for managing public procurement requirements, and through these principles, procurement practitioners and the Procuring Entities's must work (Lynch, 2019). The public procurement principles underly the following areas; transparency, integrity, efficiency, economy, openness, fairness, competition, and accountability. Organization members of the United Nations agreed on the crucial four principles in public procurement which are (i) promotion of procurement objectives, (ii) fairness, Integrity and transparency through competition (iii) economy and effectiveness; and (iv) Best value for money (WB,2017). Every Procuring Entity needs to have a clear understanding of the Public Procurement Principles to serve as guiding principles in decision-making processes. By integrating these principles in PE's work ethics, the decisions' results will always align with the public procurement objectives (Alonso, 2013).

The Regulations (2013) provide that when AO's and members of Tender Boards undertake procurement or approving procurement be guided by the basic guiding principles. These basic guiding principles are economy and efficiency, equal opportunity to competition, integrity, accountability, and fairness, and transparency.

Transparency: Transparency international (2006) defines transparency as laws, regulations, institutions, processes, plans, and decisions that are made accessible to the public at large or at least to “representatives” of the public so that processes and decisions can be monitored, reviewed, commented on and influenced by the stakeholders, and decision-makers can be held accountable for them. Transparency means that information on the public procurement process must be available to everyone: contractors, suppliers, service providers, and the public at large unless there are valid and legal reasons to keep certain information confidential (Lynch, 2019). Information to be available to everyone includes specific regulations, annual procurement plans, business opportunities, contracts awarded, and procurement statistics (Osei-Tutu, *et al.*, 2014; Cao and Huang, 2018). The confidential information which may not be available to everyone includes information related to national security and defense.

According to the OECD (2016), Transparency in public procurement promotes accountability, ensures access to information, and plays a vital role in leveling the playing field for businesses and allowing small and medium enterprises to participate on an equal footing. Osei-Tutu. *et al.*, 2010) observe that a transparent procurement system has clear rules and mechanisms to ensure compliance with those rules: unbiased specifications, objective evaluation criteria standard solicitation documents, equal information to all parties, and officers' confidentiality, etc.

Lastly, transparency at all stages of the procurement cycle leads to increased competition, promotion of fairness, and fair treatment of bidders in public procurement (Hui, *et al.*, 2011). It also leads to increased public confidence. The PE increases suppliers' participation in government transactions, leads to increased efficiency and effectiveness, and will make optimum use of public resources in the procurement system. Lack of transparency in the procurement process will result in poor management and resource allocation and increasing injustice. Transparency and accessibility of general procurement information are keys for promoting integrity, minimizing waste, and preventing corruption (Hui, *et al.*, 2011; Cao and Huang, 2018).

Fairness and Equal Treatment to Competition: The Principle of equal treatment prohibits discriminatory practices against any bidder regarding conditions of participation concerning financial, technical, or commercial qualifications and capacity (Alonso, 2013). An excellent public procurement should be impartial and consistent in all aspects, from procurement

initiation to awarding the contract to a successive bidder (Lynch, (2019). Furthermore, the system should offer all interested bidders an equal opportunity to compete.

The requirement for fair competition to work best in procurement is that it must guard against collusion and be conducted based on clear and appropriate regulations, rules, and procedures applied consistently to all potential bidders (WB, 2017). To achieve the principle of equal treatment, PEs must adopt practices that promote fair competition. The practices include, publication of IFT, EOI or RFP to the journal, tenders portal, newspapers of wide circulation, PE's website and notice boards. They also include elimination of discriminatory practices, technical specifications or descriptions of services which may limit participation on equal terms; ensure that all the selection criteria are specified in the tender documents or pre-qualification and RFP; and ensure that the tender selected conforms to the requirements of the tender document and meets the prescribed selection criteria (PPR, 2013).

Integrity and Ethical Behaviour: Integrity essentially is the reliability (OECD, 2016); it refers to upholding ethical standards and moral values of honesty, professionalism, and righteousness; and it is a cornerstone for ensuring fairness, non-discrimination, and compliance in the public procurement process (OECD, 2016; WB, 2017). In public procurement, integrity is twofold; that is, there is the integrity of the procurement process itself and public procurement practitioners' integrity. It is required that tenderers and other stakeholders in the public procurement process must rely on any information disseminated by the procuring entity. Awoke and Singh (2020) posit that the procurement process's integrity assures confidence in the procurement system. It requires that, when tender documents are made publicly available, the information contained in must be dependable and free of ambiguities or biases.

Therefore, when tenderers review the tender documents, they should be able to determine if; they are eligible and qualified to undertake the work; they need to associate with other tenderers in forms of JV or any other preferred consortium. Furthermore, they should also know other requirements in the tender and how they will be evaluated and selected. In order to achieve the above, the evaluation and selection criteria must be clearly stated in the tender documents, remain unchanged. If modification is required, tender documents should be amended, and all amendments shall be published, communicated, and made available to all prospective tenderers on time. Lastly, those amendments in the tender documents shall allow tenderers sufficient time to alter their offers affected by changes in the tender documents.

The integrity of procurement practitioners requires that personnel working within PEs involved in public procurement to present personal and professional integrity. Accounting Officers in a PE are the guardians of the integrity of the procurement process (Mlinga, 2009). They must handle and manage the procurement process honestly, truthfully, responsibly, and reliable as mandated by the public procurement rules. Moreover, they have to ensure the funds they have been entrusted with are spent in a professional, correct, fair, timely, and transparent manner (WB, 2017). Lack of integrity in the procurement process leads to unethical behavior, which is the playing field of corrupt and fraudulent practices (Mlinga, 2009).

2.2 The Public Procurement System of Tanzania

The OECD, (2009) pointed out that Public Procurement is estimated to accounts for over 10% -15% of GDP across the world. South -Asia and Sub-Sahara Africa have the highest share of public procurement in GDP at 19% and 14.9%, respectively (Djakov, Islam and Saliola, 2016). In Tanzania, the public procurement accounts for 25% of the national budget, and about 75 % of the development fund spent on the procurement of various goods, services, and works.

2.3. Tendering Process in Public Procurement

Tender is an offer made by a contractor in response to a request by a PE (PPA, 2011). The tender process in public procurement is governed by the Public Procurement Act No.7 of 2011 and Public Procurement (Amendment) Act No.5 of 2016. The Public Procurement Regulation GN. No. 446 of 2013 and The Public Procurement (Amendment) Regulations GN. No. 333 of 2016. Once the tender is open for the public, any bidder who qualifies to bid can air out their interest depending on the method of procurement used by the PE. The process starts with identifying the procurement needs by user departments, followed by the preparation of tender documents by Procurment Management Unit and subsequent internal approvals of the tender documents by TB.

Consequently, the tender proceedings are governed by Regulations 181, 182, 184, and 185 of the GN. No. 446/2013. The process is passed through the evaluation committees, which evaluate, examine, and compare the costs of submitted offers. Lastly, after obtaining the TB recommendations the AO, must communicate tender results to all bidders participated in the tender before the contract signed and entered into force (Ref. Sect. 60 of the Act.). Sect. 60

(3) of the Act requires the AO to issue a notice of intention to award the contract to all tenderers who participated in the tender giving them Seven working days within which to submit a complaint if any. According to Regulation 231(4) of the GN.No.446/2013, the notice of intention to award a contract is required to describe, among other things, the successful tenderer's name, the contract sum, and completion period, and the reasons as to why the tenderers were not successful.

2.4. Appeals in Public Procurement and Procedures

Sect. 95 of the PPA provide a right to review for any contractor whose bid is not successful, may be due to the result of both malpractices by the AO or Entity which is entrusted with conducting a tender process or non-compliance of specific rules, procedure, and practice of tendering (Mpinzile, 2019). Once the Contractor feels such grief, there is an avenue to challenge or review the process provided under Sect.96 and 97(2) of the Act, resulting in one to grab back his right to tender and win. The PPA, 2011 provides a two tier appeal mechanism in public tendering: the administrative review by the head of PE and review by the PPAA. However, if one is not satisfied with the decision of the PPAA can refer the matter to high court for Judiciala Review.

2.4.1 Administrative Review

The review is referred to as settlements of tenderers' complaints by the Accounting Officer of the PE, the right persuaded under Sect. 96 of the Act. The law provides that a tenderer who alleges that certain violations in the tender process have arisen should first refer the review to the administration of the PE. For clarity, Sect. 96 of the Act reads that: -

“Any complaints or dispute between the PE and tenderers which arise in respect of procurement proceedings, disposal of public assets by the tenderer, and awards of contracts shall be reviewed and decided upon a written decision of the Accounting Officer of a Procuring Entity and give reasons for his decision.”

Both Sect. 96 of the Act and Regulation 105 of the GN. No. 446/2013 govern the procedures for submission of application for administrative review to the Accounting Officer. The Act and Regulation require the application submission to be in writing or electronically within Seven working days from the date when the tenderer became aware or ought to have become aware of the circumstances giving rise to complaint or dispute or from the time when the complaint or dispute arose. The complaint should be submitted to the Accounting Officer and copied to PPRA.

Documents to be submitted together with the application for administrative review according to Regulation 105 (3) a-f, include; details of the procurement or disposal requirement to which the complaint relates. Others include, details of the provisions of the Act, Regulations or provision that have been breached or omitted, an explanation of how the provisions or regulations have been breached or omitted including the dates and names of the responsible public officer (where known), documentary or other supporting evidence where available, remedies sought and any other information relevant to the complaint.

The law requires that, once an accounting officer has received the complaint about review, he should suspend the procurement proceedings of the tender in dispute until he delivers a written decision on the complaint. At this stage, the significant point is that, for independence and proper functioning of the entity, the investigation instituted may be conducted by an independent review panel appointed from within or outside the entity, but this will depend on the complaint's nature. Finally, the accounting officer shall submit a copy of the decision to the PPRA within seven (7) working days from the date of its delivery.

2.4.2 Review by the Appeals Authority

This refers to the complaint review by the Public Procurement Appeals Authority under Sect. 97 of the Act and Regulation 107 of the GN. No. 446/2013. The provisions for clarity are self-explanatory quoted below:-

“Complaints or disputes which-are not settled within the specified period; are not amicably settled by the accounting officer; or arise after the procurement contract has entered into force pursuant to section 60(11)of the Act, Then the complaint shall be referred to the Appeals Authority within seven (7) days from the date when the tenderer received the decision of the accounting officer or, in case no decision is issued after the expiry of the time stipulated under regulation 106 (6) or when the tender becomes aware or ought to have become aware of the circumstances giving rise to the complaint or dispute pursuant to Sect.97 (3) of the Act.”

The appeal procedures to the PPAA shall, upon receipt of a complaint or dispute, give notice of the complaint or dispute to the Procuring Entity. The procuring entity shall be required to submit all the relevant documentation and information about the particular tender. These can

be the documents already offered by the complainant, and other pertinent documents that the procuring entity thinks may be relevant in the disposal of the appeal by the Appeals Authority.

The PPAA shall, within forty-five (45) days, issue a written decision concerning the complaint or dispute stating the reasons for the decision and the remedies granted (if any) Section.97(6). Remedies that can be given by PPAA, among others, may include, annul in whole or in part an unlawful decision by the procuring entity, revise an illegal decision by the procuring entity and substitute its own decision for that entity. Moreover, it can require reasonable compensation to the tenderer submitting the complaint, set aside the Authority's decisions made to blacklist, or any other order or relief as it may deem fit to grant ((Ref. Section .97 (5) (a-i)) of the PPA, 2011.

2.4.3 Judicial Review

The decision of the Appeals Authority shall be final and binding on the parties and shall be enforceable in the same manner as the decree or order of the Court (Section 97 (8) of the PPA, 2011). Except that the decision of the PPAA may be subject to judicial review by the procuring entity or a tenderer but only where the applying party for judicial review can file the same within fourteen (14) days from the date when the PPAA decision delivered under Section 101 (1) of the Act.

2.5 Matters Appealed in Public Procurement

According to Sections 59(2), 60(3), 62, 95(2), 96 and 97 of the Act, and subject to PPAA Rule No.6 of the GN. No. 411/2014, an appeal to the Appeals Authority shall lie in the following matters: -

- (a) Acceptance or disqualification of a tender.
- (b) Award or proposed award of a contract.
- (c) Inclusion of an unacceptable provision in the tender documents.
- (d) Unacceptable tender process or practice.
- (e) The decision, act, or omission of the Procuring Entity.
- (f) Blacklisting of a tenderer.
- (g) Unjustified rejection of all tenders.
- (h) Any other matter which the appeals Authority may deem appealable.

2.6 Matters which are not subject to Review

According to Section 95(2) (a)-(c) of the Act, individual acts cannot be subject to review under the administrative procedure. The administrative review shall not apply under the following circumstances: -Where the selection of a method of procurement or where in the case of services, the choice of a selecting procedure was an issue or the limitation of procurement proceedings based on nationality in accordance with Section 53 of the Act or under the prescribed Regulations; available at that time. The administrative review is also not applicable in the case of services, a refusal by the procuring entity to respond to an expression of interest in participating in a request for proposals proceedings.

2.7 Theoretical and Conceptual Frameworks

A theory is a set of statements that explain a group of facts that have been tested and accepted widely to describe natural phenomena. Theories are critical in research because they establish and form grounds for explaining relationships between study variables. As a result, scholars use ideas to define their areas of study.

2.7.1 The Principal -Agency Theory

This study is grounded on the Principal - Agency theory which was developed in the 1970's by Michael Jensen and William Meckling. A Principal-Agent relationship is a contract under which the principal engages another person to perform specific projects on its behalf, delegating decisions, and rights (Flynn and Davis, 2016). The Principal-Agent theory assumes an asymmetry of information between the two parties to a relationship in a given decision-making situation when one of the parties (agent) acts on behalf or represents the other party (principal). In the context of public procurement, the agents are all Procuring Entities that represent the government (principal) in all matters about the procurement of various Contractors to execute and commission construction projects. Through their AO, TB, PMU, and Evaluation Committees, PE are agents for the government in all public procurement proceedings. They are required to comply with the procurement policy, Act, rules, and regulations, which may result in a principal-agent problem.

The PPA (2011) confers the responsibility of compliance with public procurement rules and regulations by the PEs. Therefore, the agency theory is useful in explaining the relationship between Government and PE's in adherence to procure Contractors (Chrisidu-Budinik and Przedannska, 2014). The theory addresses the aspects of under which Contractor's

arrangements and the relationships between a principal and an agent operates most efficiently (Flynn and Davis, 2016). It is also used as the basis of developing the most efficient contract to govern the principal-agent relationship, to help design the most effective types of contracts and relationships to provide fair outcomes to all parties.

In the public procurement process of engaging Contractors, PEs are Principals and have to engage Contractors as their agents to fulfill their objectives by contracting out tasks. Contracting out of functions between the public agency awarding the contract and the private entity (Contractor) can be analyzed through agency theory by guiding the drafting of contracts to address each party's responsibilities and what they can and cannot do.

The analysis of the Public Procurement system from agency theory reveals the limitations that exist in the system, notable the asymmetry of information on the public procurement market, which can lead to: -

- (i) An increase in agency costs.
- (ii) Problems with the fulfillment of the subject matter of the contract.
- (iii) The cancellation of the public procurement proceedings (Chrisidu-Budinik and Przedanska, 2014; Flynn and Davis, 2016).

The asymmetry of information affects both the principal and agent in the tack of fulfilling their obligations.

There are roles played, and decisions made from the start of the procurement process by government PEs. These determine the conduct of the Contractors, PEs, and the effects of fulfilling the contract as early as the beginning of the process contract award. Most of these decisions that form the relationship are defined by the public agent (PE), which has been tasked by the government to ensure compliance regarding the law, rules, and regulations of public procurement. Simultaneously, decisions that form the relationship can ensure that they articulate their needs and expectations in their tender documents.

Henceforth, the analysis of Public Procurement through the Principal-Agency theory describes the procedures that can be followed in the procurement process, define the evaluation criteria, the behavior and actions of PE's that would lead to appeals if not complied.

2.7.2 Conceptual Framework

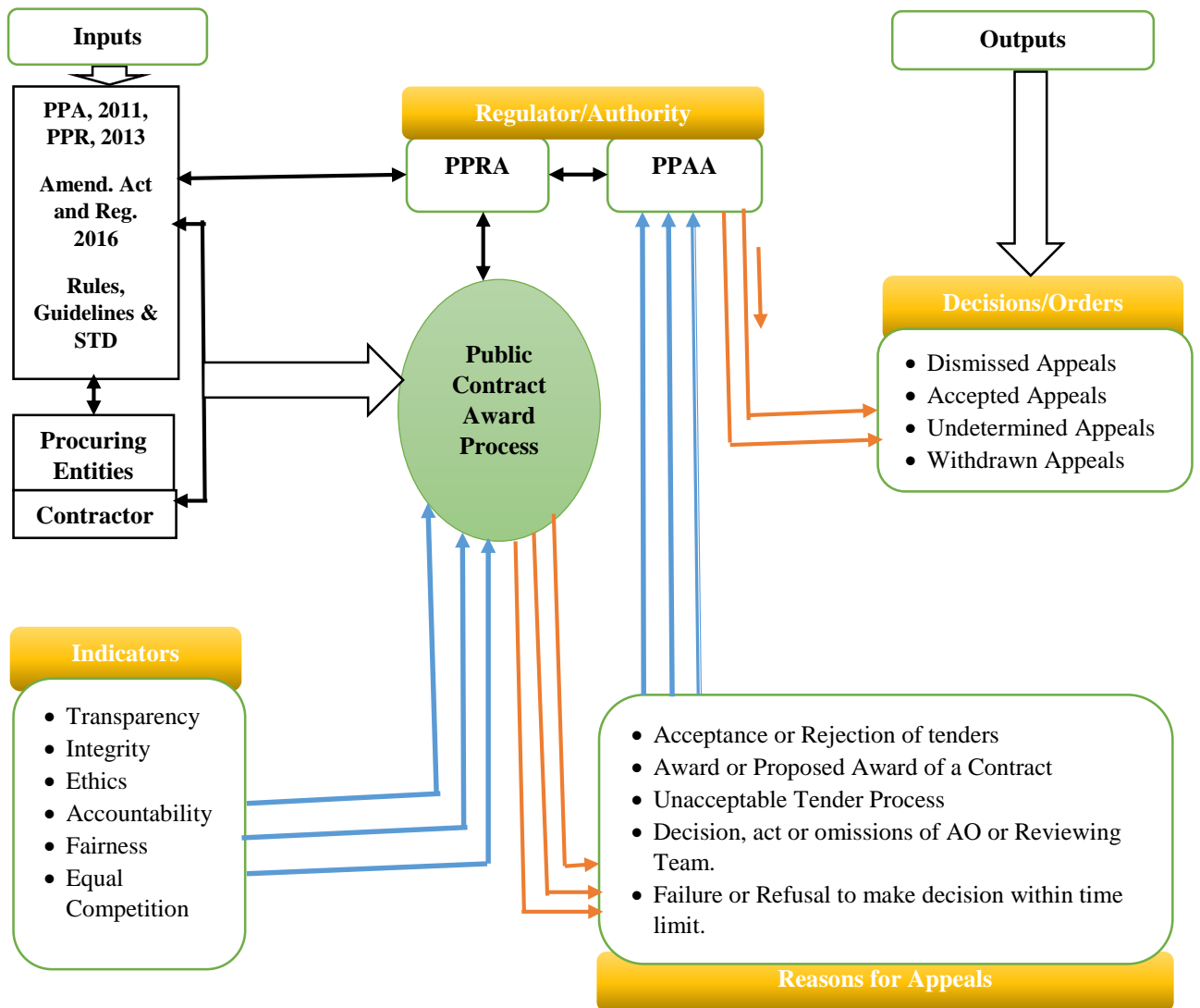


Figure 2 1 Conceptual framework of the study

CHAPTER THREE

METHODOLOGY

3.0 Introduction

This chapter presents the study's methodological framework, including the general research approach and design, details of the research population and sampling, nature, and types of data collected. Furthermore, it discusses the data analysis approach, technique, procedures, and issues relating to research data validity. The chapter concludes with a discussion on ethical issues as they relate to the study.

3.1 General Research Approach and Design

This study analyzes the public procurement appeal case documents to understand the practices by procuring entities in public procurement, which lead to tender award appeals from contractors. Due to this study's exploratory and descriptive nature, the research approach applied is the qualitative research strategy, which uses qualitative methods and techniques to collect and analyze research information. Qualitative research produces a typically large amount of textual data in the form of transcripts or field notes and published documents. The research design for this study consists of multiple case documents. These documents were reviewed to understand PE's practices that have led to appealed tender awards from Contractors in public procurement. A total of 59 procurement appeal cases whose decisions have been determined by PPAA between years 2014/2015 up 2019/2020 were reviewed.

3.2 Study Population and Sampling

The study population on which the representative sample was drawn includes all registered appeal cases filed and whose decisions have been issued by the PPAA. The appeal case's time coverage is between the years 2014/2015 up to and including the year 2019/2020. The reason for selecting this period is that, although the PPA, 2011 was enacted and assented in 2011, it comes into operation on 20th December 2013 when the Regulations, GN. No. 446/2013 was published by the government in the national gazette. Therefore, the population on which the sample was drawn consists of 247 filed appeal cases. It includes appeal cases related to the procurement of Works, Consultancy, Goods, and Non-Consultancy services (Figure 3.1). Records of procurement appeal cases available at the PPAA website retrieved on 20th December 2019 showed that out of 247 filed appeal cases, 8 cases were withdrawn, and 5 cases were undetermined.

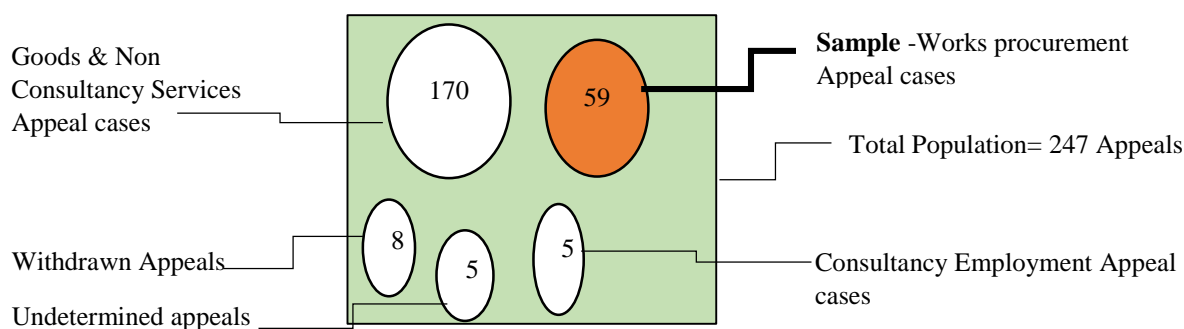


Figure 3 1 Study Population (Source: PPAA Website, 2020)

Because this study deals only with registered complaints on the award of tenders related to the procurement of works, only filed appeal cases on the procurement of works were purposely selected. Therefore, all 59 appeal cases on the procurement of works were selected and used in this study.

3.4 Nature of Data Collected

Qualitative data for this study are published decisions of the public procurement appeal cases filed that have been determined by PPAA. These data have the following project categories as classified by the researcher in Table 1 next: -

Table 3.1: Constituents of Study Sample

S/No.	Category of Appeal Cases:-	Total no. of Cases
1	Civil and Road Works	12
2	Building and MEP Works	16
3	Electrification and Solar Power Works	12
4	Water Supply, Sanitation, and Irrigation	10
5	Others (ICT and Software Installations, Instrument Landing System, Financing, and EPC).	9
Total number of Appeal Cases		59

The public procurement appeal case documents are in textual form, and they have the following features. First, they bear a PPAA heading and have a specific case number and year where the complaint was determined, after that followed by the details of the parties to the case in dispute (Appellants and Respondents), Chairperson of the panel, members of the Coram including secretariat members and representatives of the appellants and respondents. Furthermore, the documents present the details of tender in disputes in terms of Tender number, description of work to be procured, and summary of the procurement proceedings transpired from invitation to tenders up to the point of appeal. The third part presents the

submission of appealing grounds by the appellants and the prayers sought from PPAA. It also explains the submitted defense from the respondent, including preliminary objection, if any. The fourth part of the appeal case document presents the PPAA's analysis of the appellant's submission and respondent's counter-responses and, lastly, the decision of the PPAA. The documents have pages ranging from a minimum of five (5) pages up to a maximum of 30 pages.

This study reviewed all 59 procurement appeals cases on tender awards related to procurement works, whose decision has been issued by PPAA from the year 2014/2015 up to the year 2019/2020. Therefore, this study has established the classification of information of the appeal cases as follows; Appeal Case Number, Type of project, appellant's description, Category of the Procuring entity, appellant's main pray, Source of project fund, method of procurement, and Decision of the PPAA.

3.5 Data Collection

The appeal case documents were downloaded and checked for their accuracy, purpose, fitness in terms of procurement category, years filed, compatibility with software, and signed by the Chairperson and the Coram members. The documents were in scanned images, and others were in PDF files. Those in scanned images were transformed into pdf files capable of texting highlighting. After that, the files were re-named by assigning numbers from Case_1 up to Case_59. This was done to create anonymity among the appeal case documents and for easy identification. Lastly, they were safely kept in a researcher's computer and pass locked against unauthorized access and accidental loss or destruction.

3.5.1 The Data Analysis

The qualitative research data analysis tool used in this study is the NVivo 12 plus software in conjunction with Microsoft word and excel. The NVivo software is one of the current popular and powerful qualitative data management software which has its original root in the Non-numeric Unstructured Data Indexing Searching and Theorizing (NUD*IST), which was specifically designed for the management of qualitative data. The strength of NVivo software lies in its high compatibility with qualitative research designs. This software has features such

as character-based coding, rich text capabilities, and Multimedia functions, which are crucial for qualitative data management. Unlike other software like MAXQDA and Atlas.ti, NVivo 12 plus is flexible, particularly in retrieving coded data and conducting complex queries that help the researcher to explore patterns, themes, and sub-themes across data. Also, it has in-built facilities which allow people from different geographical spaces to work on the same data files at the same time through networks. NVivo software is not methodological specific; it works well with a wide range of qualitative research designs and data analysis methods such as discourse analysis, grounded theory, conversation analysis, ethnography, literature reviews, phenomenology, and mixed methods (Zamawe, 2015).

3.5.2 The Data Analysis Process

The data analysis process started with the creation of a new project in NVivo 12 plus software named “Public Procurement Appeal Cases Analysis” and a source folder within the project for files called “Appeal Cases Decisions.” The appeal case documents (Case_1 to Case_59) were imported into the project. The next step was coding, which is the process of putting together extracts (across documents) that are related to each other into containers called nodes (Zamawe, 2015). It is a process of creating a category that is used to describe a general feature of data. Apriori codes were designed to categorize aspects of more general pre-specified research questions, research objectives, and theories. After that, all appeal case documents were thoroughly read in detail to get familiarity. Noting of concepts that were appearing in the documents for further exploration and comparison with the research objectives and research questions was performed. Inductive approach was used to create and generate more codes. Identified Codes were housed into containers in the NVivo software called nodes, which were the pre-defined categories of information resulted from the research objectives and research questions. As the process of coding continued, parent nodes and child nodes were further created in order to house relevant coded text from documents. From this process, one parent node was created into which all children nodes were housed. The parent node formed was named as the nature of appeal cases. Parent node was created to represent the broader theme of specific objective one, which aimed to identify the nature of appeal cases, the bases, and arguments of the Contractor’s appeals. Child nodes were created for specific sub-themes

within the Contractor's grounds of appeals. The process of coding resulted in the creation of Ten (10) child nodes, as presented in Figure 3.3. Coding to these child nodes continued with the rest of the documents. One new free node named "Emerging issues" was added during the process of coding. This node was specifically for storing codes that are not pre-defined in the parent and child nodes.

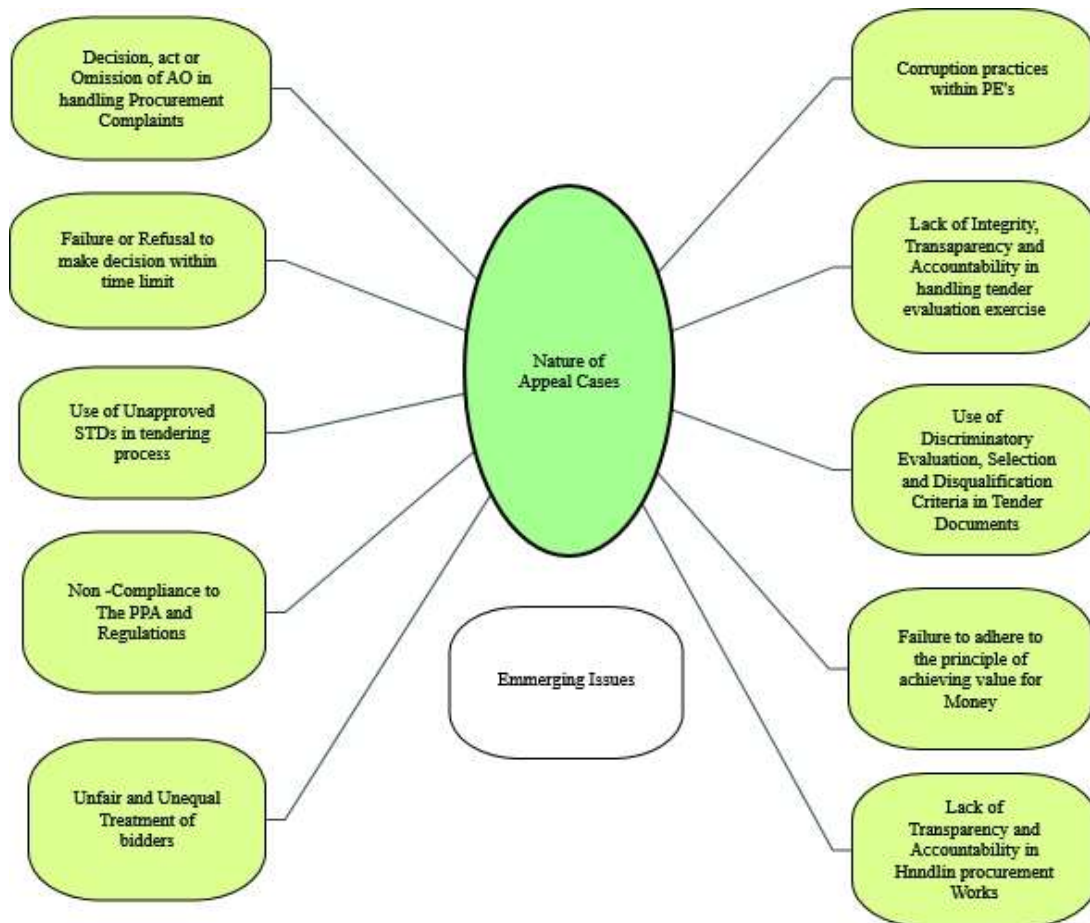


Figure 3 3 Parent and Child nodes

Coding stripes were also turned on to help manage the coding process by providing some insights, for example, where the densest parts or coding are and so on. Node visualization was also frequently done by exploring diagrams and word clouds to see how often a piece of specific information was coded into various nodes.

The inductive approach was used to adding more codes from the data. This was done by repeated reading of a small set of files and identifying codes from them, which led to the generation of a codebook. Therefore, using the generated codebook, the analysis process in Nvivo 12 plus was interactive as new codes and sub-codes were added, refined, merged, and

others deleted throughout the process. Through this process, different themes and sub-themes were identified for interpretation and discussion.

Before starting running different queries for data interpretation in the NVivo software, one crucial aspect of the research objective was to analyze the appeal cases to understand practices by Procuring Entities that have led to appealed tender awards from contractors. To achieve the goal, node classifications containing defined attributes for all appeal cases were created. All appeal case documents were created as “cases” within NVivo. “Cases” are nodes that represent “unit of analysis” for the data, for instance, demographic information of documents (Procuring Entities, Contractors (Appellants), Contractors prays, PPAA decisions, and Orders, Type of projects, etc.). After creating the appeal case documents as cases within NVivo, they were further exported to an Excel spreadsheet in which case classification was done to develop demographic information of those appeal case documents. The demographic data of classified cases were assigned to each case file in NVivo by importing the Excel file case classifications.

3.5.3 Interpretation and Presentations

Data interpretation was made by running various queries in Nvivo 12 plus. For example, the matrix coding query and crosstab query were used to explore the relationship between the appeal cases' codes and attributes. Other queries used to analyze and interpret coded data were word frequency query, text search query, and coding query. Then, memos in Nvivo 12 were used for interpreting the results of the queries in light of the literature so as to respond to the research questions. Therefore, the appeal case's demographic data were vital in aiding the analysis process.

The results of the study were presented by using tables and bar charts. Results presentation in tables and bar charts were used because they make data easy and straightforward to compare and interpret.

CHAPTER FOUR

DATA ANALYSIS, FINDINGS, AND DISCUSSION

4.0 Introduction

The previous chapter presented the study's methodology, which elaborated on how a representative sample was drawn and how the analysis was carried out in the Nvivo 12 plus software. This chapter presents the study findings from data collected (i.e, appeal case documents) in relation to research objectives and research questions. The study aims to analyze the appeal cases to understand practices by procuring entities that have led to appealed tender awards from contractors. Three specific objectives are to achieve the primary goal. The findings of these are presented according to objectives supported by themes, sub-themes, and ideas found within the documents.

4.1 Characteristics of the Appeal Case Documents

This section provides a description of the general demographic structure and classifications of the appeal case documents reviewed. Furthermore, it gives the characteristics and category of appellants, PE's involved in appeals, and preliminary findings of the appellant's prayers and decisions of the PPAA.

This study reviewed 59 appeal cases appealed by works contractors who participated in public tender proceedings between years 2014/2015 up to and including year 2019/2020 and whose decisions have been issued by PPAA. In 59 appeal cases, two files contained three consolidated appeal cases in each file (i.e Consolidated Appeal Cases No.30, 31 & 32 of 2016 appealed by One appellant and Consolidated Appeals Case No. 23, 24 & 25 of 2015 & 2016 appealed by appellants in JV). Three files each contained two consolidated appeal cases (Consolidated Appeals Cases No. 37 & 38 of 2014 -2015 appealed by two appellants, Consolidated appeal Cases No.42 & 43 of 2014 – 2015 appealed by two appellants, and Consolidated Appeal cases 28 & 29 of 2017- 2018 appealed by One appellant). Therefore, this makes a total of 59 reviewed appeal cases in this study.

4.1.1 Structure of Appeal Cases documents

All appeal cases documents examined have standard structures and arrangements. They are filed in conformance with PPAA Form No. 01. The appeal cases were categorized into eight parts: -

Part I - This part presents the Name of the PPAA, Appeal Case Number, and year in which the procurement appeal case was registered and determined. Information obtained from this part was used to understand and justify the range of the year of the sample selected. That is between the year 2014/2015 up to year 2019/2020.

Part II - Name of the appellant(s), Respondent(s), and Interested party to the Case, if any. Information obtained from this part was used to identify categories of PEs and Contractors involved in appeals. Furthermore, it helped to understand the interested parties to the appeal if they are from the Contractor or the PE.

Part III - Participating members of the matter to be determined. They include the Coram, secretariat of the PPAA, appellant's representatives, and representative members of the respondents, representatives of the interested party to the case, if any, and expert or external observers of the case.

Part IV - Background of the tender appealed, including tender name, the tender number, summary of the tender proceedings from invitation to tender to the point of appeal. Other documents present the source of funds of the tender in dispute and the method of procurement applied. Information from this part was used to understand the method of procurement involved, source of fund of the project, standard tender documents used, and the subject matter or source of the appeal.

Part V - Presents the summary of the submissions by the appellants and prays sought from the PPAA. Information from this part was used to identify the grounds of the appeals, fundamental breach of the Act and regulations made by the PE's, and finally, what the appellants plead from the authority.

Part VI - Presents the Preliminary objection to the appeal by the Appellant and or the Point of law needed to be applied first. These parts are subjective because their occurrence depends if there are preliminary objections from the respondent. The information obtained from the preliminary objection, including the counter-response from the appellant and the decision thereof, was used to identify if the appeal was filed within

the time frame. Also, to determine if the PPAA has jurisdiction power to determine the appeal, and or the appellants have locus standi in the appeal. Furthermore, if there is a point of law to be applied before the appeal. The information from the point of law was used to identify if the Authority has jurisdiction power to determine the appeal case and or the appeal is filed within the timeframe.

Part VII – Presents a summary of the respondent's reply to the statement of appeal grounds and prays of the respondents to the PPAA. Information obtained from this part was used to understand the response of the respondents on the grounds of complaints raised by the appellants concerning the violation and contravention of the requirement of the Act and regulations.

Part VIII - Presents the analysis of the statement of appeal and replies of the statements of appeal from the respondents by PPAA. It further presents the agreed centre main issues in dispute, which the Authority proceed to determine and finally the decision of the Appeals Authority. This part was used to identify the significant issues and facts of the appeal cases with the provisions and requirements of the Act and Regulations. The findings from this part enabled to understand more profound the balance as to which are not proper in the fundamental cause of the public procurement process and proceedings. The information also was used to identify different decisions issued by the PPAA, whether they uphold the appeal or dismiss.

4.1.2 Appeal Cases Classification

Classification of appeal case documents was done in the Microsoft excel spreadsheet because it is easy to arrange in order wanted. Classification of the document aimed to create attributes for analysis. The process of data classification resulted in the creation of a case classification sheet with the following categories.

- (i) Case No. - An appeal case document serial number as assigned by the researcher.
- (ii) Case Description - A summary of the appeal case numbered above and year as recorded by PPAA.
- (iii) Appellant - Describes the Category of the appellants. At this category, we have local contractors, Local contractors in JV, foreign Contractors, Foreign contractors in JV, and Foreign specialized contractors.

- (iv) Procuring Entity - This provides the categories of procuring entities involved in appeals. This classification contains the following types of PEs. Local Government Authorities, Parastatal Organisations, Executive Agencies/Public Authorities, and Ministries. Information from this classification category helped in analyzing the PEs involved in appeals.
- (v) Main Prayers from appellants - This category describes the major appellants pray sought from the PPAA. The essence of this classification category helped in analyzing the significant complaints that contractors appeal against.
- (vi) PPAA Decision – The decision that the PPAA granted to the appellants after analyzing the Contractor’s grounds of appeals and counter-response from the PE’s in relation to the PPA and Regulations. Classification of the PPAA decision helped in the analysis of the Contractor’s grounds of appeal validity in the eyes of the law. Consequently, it helped in answering the research questions of specific objective two.
- (vii) Method of procurement used and the source of funds for the tender under dispute. Some appeal cases mentioned the method of procurement used by the PE in floating the tender in dispute. This is perceived by the researcher as important information in analysis to determine whether the method of procurement used by the PE influences the reasons to the appeal.
- (viii) Project type – provides the category of the project involved in the appeal. Project category classification was considered to be important in aiding the analysis process, particularly on projects involved in appeals.

Table 4.1: Overview Classification of Appeal Cases

Case No.	Case Description	Appellant	Procuring Entity	Contractor's Main Prayer	PPAA Decision	Method of Procurement	Source of Fund	Type of Project
1	Appeal Case No. 08 of 2019 -2020	Local JV	LGAs	Award of Contract	Dismissed	RNCB	Others	WSSI
2	Appeal Case No. 04 of 2015 - 2016	Foreign JV	POs	Award of Contract	Dismissed	NCB	Others	B/MEP
3	Appeal Case No. 32 of 2015 - 2016	Local Contractor	EA/PA	Re-Evaluation	Dismissed	NCB	Others	B/MEP
4	Appeal Case No. 46 of 2014 - 2015	Local Contractor	EA/PA	Re-Evaluation	Dismissed	NCB	Donor Fund	B/MEP
5	Appeal Case No. 03 of 2016 - 2017	Local Contractor	LGAs	Re-Evaluation	Dismissed	NCB	Others	WSSI
6	Appeal Case No. 04 of 2017 - 2018	Local JV	EA/PA	Re-Evaluation	Dismissed	Turnkey	Donor Fund	ESP
7	Appeal Case No. 06 of 2019 - 2020	Local Contractor	LGAs	Award of Contract	Re-Tender	NCB	Others	ESP
8	Appeal Case No. 09 of 2019 - 2020	Local Contractor	EA/PA	Award of Contract	Re- Evaluation	NCB	Others	CRW
9	Appeal Case No. 10 of 2017 - 2018	Local JV	EA/PA	Award of Contract	Dismissed	Turnkey	Donor Fund	ESP
10	Appeal Case No. 11 of 2017 - 2018	Foreign JV	EA/PA	Award of Contract	Partly upheld & Re-Tender	Turnkey	Donor Fund	ESP
11	Appeal Case No. 12 of 2017 - 2018	Local Contractor	EA/PA	Re-Evaluation	Re-Tender	RNCB	Others	B/MEP
12	Appeal Case No. 12 of 2019 - 2020	Local Contractor	EA/PA	Re-Tender	Nullified the tender process	NCB	Others	WSSI
13	Appeal Case No. 14 of 2017 - 2018	Local Contractor	LGAs	Award of Contract	Dismissed	NCB	Others	CRW
14	Appeal Case No. 15 of 2016 - 2017	Local JV	LGAs	Award of Contract	Dismissed	NCB	Others	CRW
15	Appeal Case No. 18 of 2016 - 2017	Local Contractor	LGAs	Re-Evaluation	Partly upheld and Dismissed	NCB	Others	CRW
16	Appeal Case No. 19 of 2016 - 2017	Local Contractor	LGAs	Re-Evaluation	Partly upheld and Dismissed	ICB	Donor Fund	CRW
17	Appeal Case No. 19 of 2017 - 2018	Local Contractor	EA/PA		Withdrawal order	Unassigned	Unassigned	CRW
18	Appeal Case No. 02 of 2016 - 2017	Local Contractor	LGAs	Re-Evaluation	Procurement Audit	NCB	Others	CRW
19	Appeal Case No. 20 of 2016 - 2017	Foreign Contractor	EA/PA	Award of Contract	Dismissed	ICB	Others	Others

Case No.	Case Description	Appellant	Procuring Entity	Contractor's Main Prayer	PPAA Decision	Method of Procurement	Source of Fund	Type of Project
20	Appeal Case No. 21 of 2018 - 2019	Local Contractor	EA/PA	Sign the Contract	Dismissed	RNCB	Others	B/MEP
21	Appeal Case No. 22 of 2013 - 2014	Local Contractor	EA/PA	Re-Evaluation	Re-Tender	NCB	Others	B/MEP
22	Appeal Case No. 22 of 2017 - 2018	Local Contractor	LGAs	Re-Tender	Nullified	NCB	Others	B/MEP
23	Appeal Cases No. 23 of 2015 - 2016	Foreign JV	EA/PA	Award of Contract	Re- Evaluation	Turnkey	Donor Fund	ESP
24	Appeal Cases No. 24 of 2015 - 2016	Foreign JV	EA/PA	Award of Contract	Re- Evaluation	Turnkey	Donor Fund	ESP
25	Appeal Cases No. 25 of 2015 - 2016	Foreign JV	EA/PA	Award of Contract	Re- Evaluation	Turnkey	Donor Fund	ESP
26	Appeal Case No. 26 of 2015 - 2016	Local Contractor	EA/PA	Re-Tender	Dismissed	RICB	Others	B/MEP
27	Appeal Case No. 26 of 2016 - 2017	Local Contractor	EA/PA	Re-Evaluation	Postqualify the Appellant	NCB	Others	WSSI
28	Appeal Case No. 26 of 2018 - 2019	Foreign Contractor	LGAs	Award of Contract	Dismissed	RICB	Others	CRW
29	Appeal Case No. 27 of 2015 - 2016	Local Contractor	EA/PA	Award of Contract	Re- Evaluation	NCB	PE'S Own Fund	B/MEP
30	Appeal Case No. 27 of 2017 - 2018	Foreign Contractor	EA/PA	Re-Evaluation	Dismissed	ICB	Donor Fund	WSSI
31	Appeal Cases No. 28 & 29 of 2017 - 2018	Local Contractor	LGAs	Award of Contract	Dismissed	ICB	Others	CRW
32	Appeal Case No. 29 of 2016 - 2017	Local Contractor	LGAs	Award of Contract	Dismissed	NCB	Others	CRW
33	Appeal Case No. 03 of 2017 - 2018	Local Contractor	POs	Compensation	Partly Upheld & Dismissed	NCB	Others	Others
34	Appeal Case No. 03 of 2014 - 2015	Local Contractor	EA/PA	Re-Tender	Dismissed	NCB	Others	B/MEP
35	Appeal Case No. 30 of 2015 - 2016	Foreign Contractor	Ministries	Re-Evaluation	Dismissed	Turnkey	Donor Fund	Others
36	Appeal Case No. 31 of 2015 - 2016	Foreign JV	Ministries	Award of Contract	Upheld- Donor decision prevailed	Turnkey	Donor Fund	Others
37	Appeal Case No. 31 of 2018 - 2019	Foreign Contractor	EA/PA	Award of Contract	Dismissed	NCB	Others	Others
38	Appeal Case No. 32 of 2018 - 2019	Foreign Specialized Contractor	EA/PA	Re-Evaluation	Partly Upheld & Dismissed	NCB	Others	B/MEP

Case No.	Case Description	Appellant	Procuring Entity	Contractor's Main Prayer	PPAA Decision	Method of Procurement	Source of Fund	Type of Project
39	Appeal Case No. 35 of 2018 - 2019	Local Contractor	EA/PA	Award of Contract	Re-Tender	NCB	Others	CRW
40	Appeal Case No. 36 of 2018 - 2019	Foreign Contractor	EA/PA	Re-Tender	Undertermined	ICB	International Bank Loan	WSSI
41	Appeal Case No. 37 of 2018 - 2019	Local Contractor	EA/PA	Award of Contract	Dismissed	NCB	Others	Others
42	Appeal Case No. 37 of 2014 - 2015	Local JV	LGAs	Re-Evaluation	Dismissed	NCB	Others	CRW
43	Appeal Case No. 38 of 2014 - 2015	Local JV	LGAs	Re-Evaluation	Dismissed	NCB	Others	CRW
44	Appeal Case No. 39 of 2018 - 2019	Local Contractor	Ministries	Award of Contract	Nullified intention to award, compensate the appellant & proceed with the award to the Appellant.	NCB	Donor Fund	Others
45	Appeal Case No. 42 of 2014 - 2015	Foreign Contractor	POs	Re-Evaluation	Dismissed	ICB	PPP	ESP
46	Appeal Case No. 43 of 2014 - 2015	Foreign Contractor	POs	Re-Evaluation	Dismissed	ICB	PPP	ESP
47	Appeal Case No. 40 of 2016 - 2017	Local Contractor	EA/PA	Re-Tender	Re- Evaluation	NCB	Others	B/MEP
48	Appeal Case No. 41 of 2014 - 2015	Foreign JV	EA/PA	Re-Evaluation	Dismissed	ICB	International Bank Loan	WSSI
49	Appeal Case No. 41 of 2016 - 2017	Local Contractor	EA/PA	Re-Evaluation	Re- Evaluation	NCB	Others	B/MEP
50	Appeal Case No. 41 of 2017 - 2018	Local Contractor	LGAs	Award of Contract	Dismissed	NCB	Others	WSSI
51	Appeal Case No. 42 of 2018 - 2019	Local Contractor	EA/PA	Award of Contract	Nullified	NCB	Others	WSSI
52	Appeal Case No. 47 of 2018 - 2019	Local Contractor	LGAs	Re-Tender	Nullified	NCB	Others	WSSI
53	Appeal Case No. 09 of 2016 - 2017	Local Contractor	EA/PA	Re-Tender	Nullified	NCB	Others	B/MEP
54	Appeal Case No. 07 of 2017 - 2018	Foreign Contractor	EA/PA	Award of Contract	Dismissed	NCB	Others	WSSI
55	Appeal Case No. 08 of 2017 - 2018	Local Contractor	LGAs	Award of Contract	Sign Contract with the Appellant	NCB	Others	WSSI
56	Appeal Case No. 30 of 2016 - 2017	Foreign Contractor	EA/PA	Re-Evaluation	Dismissed	Turnkey	Donor Fund	ESP
57	Appeal Case No. 31 of 2016 - 2017	Foreign Contractor	EA/PA	Re-Evaluation	Dismissed	Turnkey	Donor Fund	ESP

Case No.	Case Description	Appellant	Procuring Entity	Contractor's Main Prayer	PPAA Decision	Method of Procurement	Source of Fund	Type of Project
58	Appeal Case No. 32 of 2016 - 2017	Foreign Contractor	EA/PA	Re-Evaluation	Dismissed	Turnkey	Donor Fund	ESP
59	Appeal Case No. 08 of 2015 - 2016	Local Contractor	LGAs	Award of Contract	Dismissed	NCB	Ministry	WSSI

KEYSType of Project

WSSI - Water
Supply/Sanitation/Irrigation

RNCB - Restricted National
Competitive Bidding

NCB -
National
Competitive
Bidding
POs -
Parastatal
Organisations

Method of Procurement

LGAs - Local
Government
Authorities

Procuring Entities

ESP - Electrification and
Solar Power

RICB - Restricted
International Competitive
Bidding

EA/PA -
Executive
Agencies/
Public
Authorities

B/MEP - Building and
Mechanical Engineering
Works

ICB - International
Competitive Bidding

CRW - Civil & Road Works

JV - Joint
Venture

Classification of appeal cases, as shown in Table 4.1, reveals that 33 local contractors, six local contractors in JV, ten foreign contractors, nine foreign contractors in JV, and 1 Specialized foreign contractors involved in appeal cases. Table 4.2 below presents a summary of the contractors involved in appeal cases.

Table 4.2: Constituents in Appeal Cases

S/No.	Contractors	Total Number of Appeals
1	Local JV	6
2	Foreign JV	9
3	Local Contractors	33
4	Foreign Contractors	10
5	Foreign Specialized Contractors	1
Total		59

Table 4.3 below indicates that 33 tenders floated under the National Competitive Bidding method were involved in appeals followed by Turnkey (11) tenders and (3) Restricted National Competitive tenders. Only One tender floated under Restricted International Competitive Bidding was involved in the appeal. The method of procurement used in procurement of tender withdrawn before the hearing was not identified.

Table 4.3: Method of Procurement involved in Appeal cases

S/No	Method of Procurement	Total Number of Appeals
1	NCB	33
2	RNCB	3
3	ICB	9
4	Turnkey	11
5	RICB	2
6	Others (Unassigned)	1
Total		59

4.1.3 Procuring Entities in Appealed Cases

A government entity referred to as a PE shall have its own Tender Board and a PMU. Therefore, in analyzing these public procurement appeal cases, four categories of Procuring Entities were used. The first category contained Executive Agencies and Public Authorities (EA/PA). They include government agencies like TANROADS, TARURA, and REA. Public Authorities constitute EWURA, TAA, Water, and Sanitation Authorities like DAWASA, MWAUWASA, and MUWASA. Other public authorities include Pangani Water Basin Development Board, Public Universities, and Health Institutions.

The second category comprised the Government Ministries, which constitute the Ministries themselves and beneficiary institutions from the ministerial procurement activities. Ministries involved in appeal cases include the Ministry of Lands, Housing and Human Settlement Development, Ministry of Education, Science and Technology. On the other hand, the third category of PEs comprised the Local Government Authorities, which constituted District, Town, Municipal, and City Councils. The fourth category of PE's comprised all Parastatal Organizations involved in appeal cases. NSSF is the only Parastatal involved in appeals. The distribution of these PEs against the number of cases appealed by contractors is presented in Table 4.4 below:

Table 4.4: Procuring Entities in Appeal Cases

S/No.	Procuring Entities	Total Number of Appeals
1	The Executive Agencies/Public Authorities	34
2	Ministries	3
3	Local Government Authorities	18
4	Parastatal Organisations	4
Total		59

Executive Agencies and Public Authorities received a high number of appeals from contractors (34 appeals), followed by Local Government Authorities (18 appeals), Parastatal Organisations (4 appeals), and Ministries (3 appeals). The government Executive Agencies and Public authorities are the significant implementers of development projects. According to the Tanzania national budget of 2015, major development funds were located on the construction of public infrastructure. Therefore, the high number of appeals in this category of PE's is implicated by their objectives of establishment specific to implement construction projects of the government.

On the other hand, LGA's involved in the procurement of works for infrastructure construction either from their internal sources of fund or through the national budget as allocated by the central government. The reflected number of appeals from contractors again indicates that LGA's also as agents to the government to attain its objectives through public procurement of works. A small number of appeals to Parastatal Organisation and Ministries indicate that few construction projects are undertaken by these PE's as their objectives for establishment do not base in construction projects. The findings provide feelings to the researcher that the high number of appeals to Government Executive Agencies and Public Authorities is attributed by the PE's objectives in the construction of infrastructures. The

procurement of infrastructure construction projects such as electrification projects, civil and road works, and or building and mechanical works attribute the presence of appeals.

4.1.4 Contractors (Appellants) in Appeal Cases.

Five (5) categories of contractors were involved in appeal cases. These are Local Contractors, Local Contractors in Joint Venture, Foreign Contractors, Foreign Contractors in Joint Venture, and Foreign Contractors specialized in some projects. The aim was to identify the appellant's category of registration status and their relationship with the appeals.

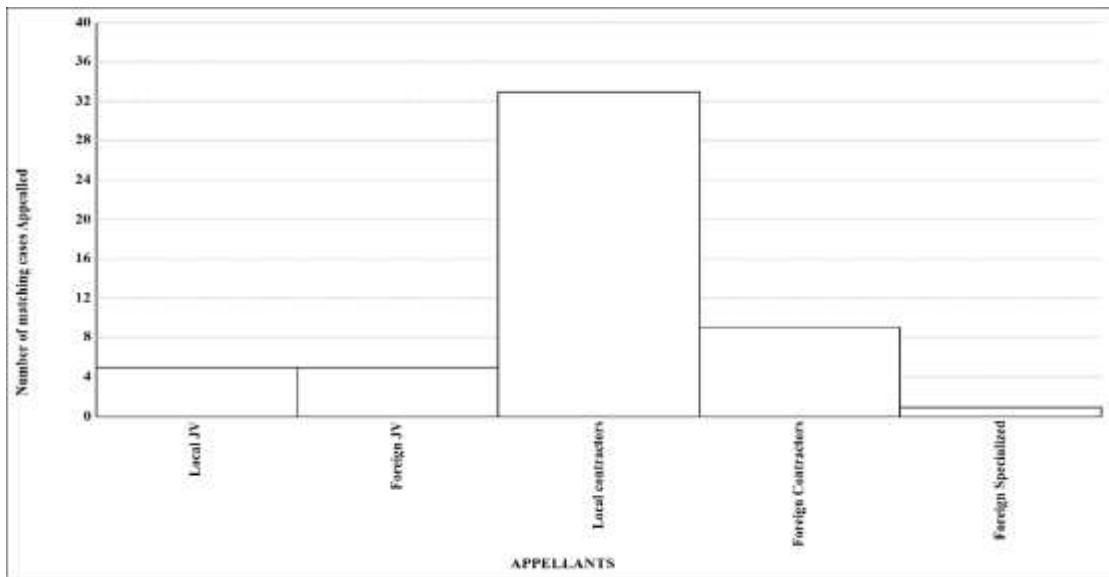


Figure 4.1 Identification of Appellants involved in Appeal Cases

Very little found in the literature on the question of category of appellants involved in appeals against PEs in awarding public construction contracts. In reference to the research aims of analyzing the appeal cases to understand the practices of PEs, which lead to appealed tender awards in public procurement, it was essential to identify the appellants who involve and their frequency of appeals. The findings presented in figure 4.1 above indicate that local contractors were frequently involved in appeals compared to foreign contractors and foreign specialized contractors. There are several explanations for these findings. One of the reasons is that most PE's in the category of LGA's and EA/PA are required to set aside contracts to be used for capacity building of local firms to comply with the requirements of Sect. 55, 55A, 55D of the PPA,2011. Hence, the right for capacity building of local firms is sought. Another reason is that local contractors are conversant with the local procurement environment and the PPA and Regulations' objectives. These findings imply that we anticipate encountering

appeal grounds not only centered on the evaluation of tenders, but also in the area of applicability of exclusive preferences to local contractors' in public tenders. However, these findings encourage further exploration of what reasons lead to appeals in comparing foreign contractors and foreign contractors and what common pleas cut across all appellants.

4.1.5 Appellants Main Prays in the Appeals

Classification of appeal cases resulted in five significant categories of appellant's prayers by contractors to the Appeals Authority. The types of prayers include ordering the PE to sign a contract with the appellant, re-evaluation of tenders, order the PE to re-tender afresh with the observance of the law, and compensation to the appellant. The first research question aimed at identifying the PEs practices that prompted contractors to lodge appeals, and the most frequent arguments that support their appeals.

This study reveals an exciting note, as presented in Figure 4.2 that, all Contractors who were involved in appeals prayed for the re-evaluation of tenders. The arguments behind the prayers include failure by the PE's evaluation committees to evaluate tenders on a common basis as required in Sect.74(1) of the PPA. Other reasons include the use of discriminatory evaluation, selection and disqualification criteria in the tender documents, failure to apply margins of preferences during cost comparison evaluation of tenders, and or irregularities in the evaluation processes. These findings of the current study are consistent with those of NAOT (2015) and the PPRA, (2017), which found that the evaluation of tenders by PE's are not compatible with the requirements of the Act and Regulations; as a result, public contracts are awarded to unqualified contractors. These findings have implications that there is a possibility that the tender evaluation process is covered with questionable practices by PEs.

Furthermore, the study findings indicate that all categories of Contractors except foreign specialized contractors involved in appeals prayed that the contract under dispute be awarded to them because they qualify for the award. They posit that their tenders are responsive to technical requirements and commercial terms and conditions in the tender documents. Others feel that the act of PE's to invite them for negotiation and subsequently issue of letter of acceptance implies that their tenders were responsive. Hence they deserve the award of the Contract.

Local contractors and foreign contractors prayed that the whole tender process be re-tendered afresh by observing the requirement of the Act and Regulations. The reason for this prayer is that the tender process in whole or in part was conducted in contravention of the provision of the Act and Regulations. They submit that the only remedy to ensure that equality, fairness, and effective competition is achieved, only re-tendering is required.

Local contractors revealed surprising findings in this study. In two appeals, they prayed to order PEs to sign a contract with the appellant and monetary compensation. The reason for the later being the contradicting decision of the PE's AO, who issued two notices of intention to award the contract to two bidders and failure to suspend the procurement process while determining the Contractor's application for administrative review. The other contractor prayed for an order to the PE to sign the contract with them because they have been issued the letter of acceptance and finalized to secure performance security for the works. Table 4.5 presents a summary of the contractor's main prayers in their appeals.

Table 4.5: Contractors Main Prayers in the appeals

S/No.	Contractors	Contractor's Main Prayer				
		Award of Contract	Re-Evaluation	Re-Tender	Sign the Contract	Compensation
1	Local JV	4	3	0	0	0
2	Foreign JV	6	0	0	0	0
3	Local Contractors	13	10	7	1	1
4	Foreign Contractors	4	7	1	0	0
5	Foreign Specialized Contractor	0	1	0	0	0
Total		27	21	8	1	1

4.1.6 PPAA Decision in Appeal Cases

Identification of decisions, orders, and or directives issued by the Appeals Authority to appellants and PE's aimed to test the validity of appeals submitted by the appellants and subsequent their relevance to the PPA and Regulations. Table 4.6 presents the summary results of the appeal cases and the corresponding decision, orders, and directives issued by the PPAA to PEs and Contractors'.

The results indicate that 52.54% of appeal cases were dismissed entirely due to lack of merits in the eyes of the law. Others were considered prematurely and or filed out of time frame.

Twenty-Seven appeals cases had issues of concern. As a result, the reasons for their appeals were upheld and decided in favour of the appellants. Re-evaluation of tenders, re-tendering, and nullification of the tender processes were the most issued decisions. Other appeal grounds were partly upheld and dismissed. A discussion of each PPAA decision is presented next.

Table 4.6: Decision and Orders issued by PPAA to Appeal Cases

S/No.	The decision of the PPAA	No. of Appeal Cases	Percentage (%)
1	Dismissed	31	52.54
2	Re-Tender	4	6.78
3	Re- Evaluation	7	11.86
4	Nullified the Tender Process	5	8.47
5	Sign the Contract with the Appellant	1	1.69
6	Partly Upheld and Dismissed	4	6.78
7	Dismissed and order to re-tender overtaken by events	1	1.69
8	Nullified the intention to award to a successful bidder and proceed with the award of Contract to the Appellant	1	1.69
9	Undetermined	1	1.69
10	Withdrawal Order	1	1.69
11	Post quality the Appellant	1	1.69
12	Upheld but Donor decision prevails	1	1.69
13	Procurement audit	1	1.69
Total		59	99.95

4.1.6 PPAA Decision and the reasons

Each order issued by PPAA had the reason thereof to justify. Table 4.7 below presents the reasons that compelled the Appeals' Authority to issue a particular order or decision to the appeal cases.

Table 4.7: PPAA Decision and Reasons

S/No.	The decision of the PPAA	Reason for the Decision
1	Dismissed appeals	<ul style="list-style-type: none"> • Lack of Merits in the eyes of the PPA and Regulations. • Prematurely filed or • Filled out of time frame
2	Order to Re-Tender afresh	<ul style="list-style-type: none"> • Use of the unambiguous selection and evaluation criteria in the tender document. • Failure by the PE to issue a well-drafted tender document that conforms to the requirement of Sect.70 of the Act and Regulation 184. • Failure by the PE's to justify the intention to award a contract to a proposed successful bidder who was the fifth-ranked bidder.

S/No.	The decision of the PPAA	Reason for the Decision
3	Order to Re-Evaluate tenders	<ul style="list-style-type: none"> • Failure by the PE's evaluation committees to evaluate tenders in a common basis as required by Sect.74(1) of the Act. • Refusal to grant margin of preference up to ten percent (10%) for a tender reserved for local firms where foreign firms participated contrary to the requirement of Sect.55(1), 55D read together with Regulation 34, 151(4) of the GN.446/2013 • The PE's evaluation committee's conduct of evaluating tenders in contraventions with the terms and requirements of their own tender documents contrary to Regulation 203 of the GN. No. 446 of 2013.
4	Order to Nullify the Tender Process	<ul style="list-style-type: none"> • Refusal by PEs to use the approved and authorized STD as required by Reg.184(3) and (5) of the GN.No.446/2013. • Failure by the PE to prepare a complete tender document as required by Sect. 70 of the PPA read together with Regulation.183(1), 184 (1), (3), and (5) of the GN. No. 446/2013. • Failure of the PE to justify the modality it had used in floating the tender using the International Bidding Procedure for the tender whose financial resources were exclusively provided by a Tanzanian public body. And whose value of tender did not exceed the amount specified in the Ninth and Thirteenth schedule to the Regulation • The PE's act of intending to award the tender to a non-responsive bidder.
5	Order to Post quality the Appellant	<ul style="list-style-type: none"> • the appellant's tender was erroneous evaluated as VAT exclusive instead of VAT inclusive. The result put the appellant's tender to be second-ranked.
6	Order to Sign the Contract with the Appellant	<ul style="list-style-type: none"> • Refusal of the PE to implement the order of the PPAA to post qualify the appellant.
7	Partly Upheld and Dismissed	<ul style="list-style-type: none"> • Uphold the prayer of Monetary compensation to the appellant after establishing that the PE did not suspend the procurement process. At the same time, there was an ongoing appeal on the same tender at PPAA.
8	Dismissed and order to re-tender overtaken by events	<ul style="list-style-type: none"> • The PE conceded before the PPAA that there was an oversight by the evaluation committee regarding the qualification criteria in the tender document. As a result of the intention to award the contract to the unqualified bidder. The PE suspended the tender, and they intended to re-tender.
9	Nullified the intention to award to a successful bidder and proceed with the award of Contract to the Appellant	<ul style="list-style-type: none"> • PE's Unlawful revoked the notice of intention to award a contract made to the appellant, and subsequent issuing the 2nd notice of intention to award the contract to the proposed successful bidder. • PE's evaluation committee acts of seeking clarifications from the bidder during the evaluation of tenders, which aimed to change the substance of the tender. The action

S/No.	The decision of the PPAA	Reason for the Decision
		<p>which is contrary to the requirements of Clause 27.1 of the ITB.</p> <ul style="list-style-type: none"> • PE's act of making the non-responsive bid by the proposed successful bidder responsive contrary to the requirement of Clause 28.3 of the ITB. The act affected the competitive position of the appellant and other bidders contrary to the provision of Sect. 4A (3) of the PPA.
10	Undetermined	<ul style="list-style-type: none"> • The appellant lacked locus standi in the appeals because he was not the tenderer who participated in the tendering process as required by Sect. 95, 96, and 97 of the Act read together with Reg. 104 as well as Rule 5 of the PPAA Rules. • PPAA lacked jurisdiction to entertain the appeal because it has no powers to determine the issues relating to contractual obligations between the parties.
11	Withdrawal Order	<ul style="list-style-type: none"> • The order was prayed by the appellant after found that the subject matter of the dispute is no more existence following receiving the letter from the PE informing that the appellant tender would not be processed based on the directives of the Dar es Salaam Regional Commissioner.
12	Upheld but Donor decision prevails	<ul style="list-style-type: none"> • That the whole tender evaluation process was not conducted in compliance with the law as it was vitiated with irregularities and contravention of the requirements of Sect. 74 of the Act. • The donor in granting the no objection contravened the requirement of the tender document by approving the award of the contract to the unqualified bidder. • The evaluation reports used to obtain the no-objection clearance from the donor were not approved by the PE's tender board. • Members of the evaluation committee didn't sign personal covenants before conducting the evaluation to declare that they do not have any conflicts of interest with any tenderer contrary to Sect. 40(6) of the Act.
13	Procurement audit	<ul style="list-style-type: none"> • Refusal of the PE to avail with all relevant documentation and information about the tender appealed. • Non-appearance of the PE and the appellant during the appeal hearing date without any reason.

4.2 Data Coding Output

One parent node which is a collection of references about a theme on nature of the appeal cases which was pre-specified from research objectives and created in the NVivo software. Further division of the parent node was performed by interrogating and refining data within

the parent node. This resulted into the creation of themes within themes, and instead of separating them, those divisions were created as subsidiary features of the parent node. The process resulted into the creation of ten (10) child nodes.

Data Coding: Data coding was performed in computer software by tagging and naming selections of text within each data item. Both deductive and inductive approach was used in data coding in the following ways: - First, by examining the documents and identifying arguments of the appellants which occurs more than once in the appeal cases, this was obtained in Part V of the appeal case documents where appellants submitted their reasons, grounds and fundamental breach of the Act or Regulations in their appeals. Second, through examinations of words of the appellants, which are said with vigorous-intensity or strong emphasis in their appeals submission and appeal prayers. Also, review in the analysis and findings of the Appeals Authority. Lastly, coding was done by examining points of agreement and or disagreements between the appellants, respondents, and the Appeals Authority. The last examination was of the most important as it provided extra issues of concern within appeals. Their frequency of references were aggregated into the parent node. Table 4.8 below provides the results of the imported codebook as an output from the analysis software.

Table 4.8: Data Codes – Parent and Child Nodes.

Node Description	Node Type	No of Case Files Coded	Frequency
Nature of Appealed Cases	Parent Node	49	354
Decision, act or omission of the AO during handling procurement complaints.	Child Node	21	41
Alleged Corrupt Practices within the Procuring Entities.	Child Node	19	32
Failure or refusal to make decision within time limit.	Child Node	15	31
Failure to adhere to the principles of achieving Value for Money.	Child Node	3	3
Lack of Integrity, Transparency, and Accountability in handling tender evaluation exercises.	Child Node	34	77
Lack of Transparency and Accountability in handling procurement works.	Child Node	5	5
Non - Compliance to Public Procurement Act, Rules, and Regulations.	Child Node	24	57
The Use of Unapproved Standard Tender Documents in the Tendering process.	Child Node	10	26

Node Description	Node Type	No of Case Files Coded	Frequency
Unfair and unequal treatment of bidders during tendering.	Child Node	13	14
Use of discriminatory Evaluation, Selection and Disqualification Criteria in the Tender Documents	Child Node	14	34

A codebook generated from Nvivo software revealed that a high number of contractor's appeals are frequently based on the questioned integrity, transparency, and accountability of PE's in handling tender evaluation exercise and non-compliance practice to the requirements of provisions of the PPA and Regulations. They are followed by the use of discriminatory, selection, and disqualification criteria in the tender documents. Also, the decision, act or omission of the PE's AO and reviewing authorities in handling procurement complaints. The alleged corrupt practices and failure or refusal to make decisions within time limits also are among the bases of contractor's appeals.

These findings from the Codebook in Table 4.8 above provide a reflection that PE's practices in handling tender evaluation are not conducted in compliance with the requirements of the provisions of the PPA and Regulations, which results in unfair disqualification, and or award contract to unqualified bidders. Literature from procurement audit reports by PPRA and CAG pointed out that many irregularities in the evaluation of tenders by PE's leads to appeals and subsequent delays to the procurement processes. However, these reflections of findings should be taken with precaution because it is not always that they have the merits before the Act. It is with this precaution that further exploration is needed as the trajectory of award of public construction contracts lies along and passes through different phases from inception up to contract award point.

Not only the evaluation of tenders, which is the most questioned practice. Decisions, acts, and omissions of PE's AO or approving authority during handling applications for administrative review are the most reasons for contractor's appeals. The possible reason behind this is that the Act requires all appeals in public procurement to rise from the failure or refusal of the AO to make a written decision within a specified time, and or the tenderer is not satisfied with the decision of the AO as required by Sect.97(2), read together with Sect. 96 of the PPA.

4.3 Thematic Analysis

Thematic Analysis is the process of analyzing data according to their commonalities, relationships, and differences across data set. It is used to analyze classifications and present themes (patterns) that relate to the data. Thematic analysis involved inspecting coded or summarized data and integrating elements to yield categories or higher level classes that capture conceptual differences in the data. NVivo 12 plus software assisted in the qualitative analysis by identifying and capturing underlying themes and sub-themes across coded data. The analytical framework developed before analyzing using broad themes related to the research questions and those that arose from the review of the literature. The aim was to examine the commonalities in the data and then subject them to further analysis and subdivision, analyzing peculiarities and contrasts within the data set and reviewing their potential relevance to the specific objectives being explored.

4.4 Themes for the Specific Objectives

Codes were further analyzed to form themes and overarching themes. With the aid of mind maps in the NVivo software, different codes were sorted into themes. Merging, deleting, and refining of nodes resulted in the creation of themes for detailed analysis. Themes with various nodes were useful in answering the specific objectives of the research. Table 4.9 below describes the list of nodes used to formulate themes, which in turn were used to answer the research questions.

Table 4.9: List of nodes used in formulating themes.

Node Description	Themes
Decision, Act or Omission of the AO during handling procurement complaints.	Specific Objective (i)
Existence of Corruption Practices within the Procuring Entities.	
Failure or refusal to make decision within time limit.	
Failure to adhere to the principles of achieving Value for Money.	
Lack of Integrity, Transparency, and Accountability in handling tender evaluation exercises.	
Unfair and unequal treatment of bidders during tendering.	
The Use of Unapproved Standard Tender Documents in Tendering process.	
Use of discriminatory Evaluation, Selection, and Disqualification Criteria in the Tender documents	
Non - Compliance to Public Procurement Act, Rules, and Regulations.	Specific Objective (ii)

4.5. Analysis of Specific Objective (i): Contractor's Arguments in the Appeals

This specific objective was set out to identify the nature and characteristics of the appeal cases to unveil the contractor's arguments in the appeals. The research question asked while reviewing the appeal case documents was, " *Which PE's practices prompted Contractor to lodge appeals in awarding public contracts? What are the arguments which support their appeals?*". The aim was to explore the insights of the Contractor's appeal cases by identifying their base grounds for appeals, and the issues usually contractors have been appealing against. Many practices that contractors appeal against the PEs during the award of contracts as detailed hereunder: -

4.5.1 Lack of Integrity, Transparency, and Accountability of PE's in handling tender evaluation exercises

Integrity refers to upholding ethical standards and moral values of honesty, professionalism, and righteousness (OECD, 2016). In public procurement, integrity comprises the integrity of the procurement process itself and the integrity of the public procurement practitioners. Likewise, Transparency in public procurement means that information on the public procurement process must be available to all bidders unless there are legal reasons to keep certain information confidential.

The integrity and transparency of the tender evaluation are among the fundamental requirements of the effective public procurement process. Nevertheless, accountability of the members of the PMU, TB, AO, and the evaluation committee is of crucial importance. A significant number of the appeals by contractors were found to question the integrity of the PEs during examination, evaluation, and comparison of tenders. Furthermore, they appeal due to what they see as a lack of transparency of the tender evaluation exercise where some clarification sought by the evaluation committee intends to change the substance of tenders contrary to Reg. 207 (1) of the GN.No.446/2013. These findings are supporting the findings by Carlson and Astrom, (2008), whereby they reported the same findings on questioned integrity and transparency of the tender evaluation exercise as the most litigious aspects of the appeals by Contractors.

Findings further reveal the following questioned integrity of the PE's evaluation committees, which are found not to handle the evaluation of tenders diligently. One contractor appealed

after identifying that the PEs evaluation committee evaluated his tender as VAT exclusive contrary to the requirement of the tender document. In their submission, they argued that: -

“... he complied with Clause 14.3 of the Instructions To Bidders (ITB) and Item 20 of the Preamble to the BoQ which clearly state that the tender price should include all duties, taxes and other levies payable by the contractor.....the Evaluation Committee erroneously evaluated his quoted tender price of TZS. 575,224,500.00 as VAT exclusive instead of VAT inclusive.” (Ref. Appeal Case No. 26 of 2016-17).

Through their evaluation committees, the PE's also unfairly disqualified the JV appellant's tender in appeal cases nos. 23, 24, and 25 of 2015-16. The appellant was disqualified at the preliminary evaluation stage in two tenders based on the reason that he failed to quote the price of one item in the BoQ contrary to the requirement of the terms of the tender document. The tender documents stated clearly that if an individual item is not priced, then the same should be considered to be covered elsewhere in the BoQ. Also, they disqualified the appellant for a reason of non-performance on other ongoing projects while the same contractor under JV was pre-qualified by the PE. The grounds for disqualification were quashed by the PPAA because the disqualification criteria used was not stated in the tender document. In their submission, the appellants expressed their dissatisfaction with the reason for disqualification by expounding that:

“the Appellant's tender for Lot 2 was disqualified at the preliminary evaluation stage for failure to quote the price for 4W Double Cabin Pickup. The Appellant had been disqualified from Lots 1 and 3 for not only having pending works and poor performance in ongoing contracts with the RespondentThat, they doubt if their disqualification was lawful and the intended award is cost-effective” (Ref. Appeal Case No. 24 of 2015-16).

Lack of accountability by PEs evaluation committees among the argued bases of the Contractor's appeal. One appeal case was based on the laxity of the PE's tender evaluation committees to observe explicitly the evaluation criteria set in the tender document; as a result, the PE conceded directly with the errors and omission of the evaluation committee and prayed for the nullification of the tender process, the prayer which was not conceived by the PPAA rather ordered the re-evaluation of the tenders. The PE's counsel reply in appeal cases No. 06 of 2019-2020 and No.32 of 2018-19 respectively expounded: -

“....., that it failed to comply with the law by evaluating the tenders based on the criterion which was not provided for in the Tender Document He also conceded that the contractor's registration requirement that a contractor should be registered or capable of being registered as electrical contractor class III and above was not a clear criterion.,he prayed for the nullification of tender proceedings

..... after taking into consideration the requirements under the law.” (Ref. appeal case no 32 of 2018 - 2019).

“.....the Respondent stated that there was an oversight during **the tender evaluation process**. ... that, the proposed successful tenderer did not qualify for the award of the Tender.... that the Tender has been suspended and it intends to re-tender.” (Ref. appeal case No.06 of 2019 - 2020).

Other appellants questioned both the integrity, transparency of the PE evaluation committees, and the TB, where the evaluation team behaved unprofessionally by evaluating tenders using the criteria which were not stated in the tender documents and or allegations which were yet to be proved. In appeal case No. 35 of 2018-19, the appellants submitted that: -

“..... the Respondent erred in law for disqualifying the Appellant’s tender based on the ground that there was an allegation made to the PCCB while it had already met all the required specifications provided in the Tender Document pursuant to Regulations 203(1)(2), 204(1) and (2) (a)-(k) of the GN. No. 446 of 2013.”

They further argued that: -

“.....that allegations to the PCCB were not stated in the Tender Document....., the Appellant’s disqualification using criteria which were not stated in the Tender Document contravened the law.”

The researcher’s opinion on the Contractors’ unproven allegations pending at PCCB concedes with the findings of the PPAA that the letter from the PCCB indicated that the matter was still under investigation, hence can not be used as criteria for disqualification. If the allegations were true, then the PE would have invoked Sections 83(1) (2)(a)(b)(3)(a) and 62(1)(3)(a) of the Act, which provides that:

“Sect. 83 (2) Where a procuring entity is satisfied, after due diligence, that any person or firms to which it is proposed that a tender be awarded, has engaged in fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, the procuring entity shall-

(a) reject a proposal for award of such contract; and

(b) report any person or tenderer, including its directors to the Authority for debarment and blacklisting in accordance with section 62 of the Act.”

Therefore, it was not a proper act of the PE to disqualify the contractor based on the allegations which were not proven.

Not only evaluation of tender by using criteria not stated in the tender documents, PE evaluation committees also were found evaluating tenders in biases and not on a common

basis as required by Sect.74 (1) of the Act. Consequently, they recommended the award of a contract to unqualified and uneconomical tenders, as reflected in appeal cases no. 41 of 2016 -17 and 42 of 2018-19. The appeal's authority upheld these appeals while appellants argued that: -

“... the proposed bidder did not comply with the requirement to submit the bid security of 5% of the Contract Price; therefore, they ought to have been disqualified during the Preliminary Evaluation stage.” (Ref. Appeal case No. 41 of 2016 -17).

“Some of the tenderers failed to comply with such a requirement; however, during evaluation, the Respondent evaluated all the tenders VAT exclusive.... that the Respondent's act had been to the disadvantage of those who complied with tender requirements” (Ref. Appeal case No. 42 of 2018-19).

Local Contractors, in their qualification for margin of preference, also appealed against the integrity of the PE's evaluation committee on failure to grant a margin of preference up to 10% as required by Reg. 38 and the ninth schedule of the regulations to local contractors when comparing prices during the evaluation of tenders in case of foreign firm participation in the tender. They reiterate in appeal case no. 41 of 2016 - 2017 that: -

“The Evaluation process was conducted in ignorance of the provisions of Section 55D of the Act and new Regulation 43 of GN No. 446 of 2013.” (Ref: Appeal case no. 41 of 2016 -2017).

The Appeals Authority upheld the appellant's grounds of appeals and ordered the tender to be re-evaluated afresh with the observance of the Act's requirement. They found that the evaluation committee seriously flawed the tender evaluation process. They said in conclusion: -

*“.....that since the **evaluation of the tender was seriously flawed**; that the Appeal partly has merits., the Respondent's decision to award is quashed, and it is hereby ordered that the Evaluation process be conducted afresh....”* (Ref. Appeal case no.41 of 2016).

With the above narrations, it is apparent that the integrity, transparency and accountability of PE's in handling tender evaluation comprised the questionable practices in the application of the margin of preference, failure to evaluate tenders in common basis rather in biases, flawed evaluation, and evaluation of tenders using other criteria which are not included in the tender documents contrary to the requirements of Sect. 72 and 74(1) of the PPA. These practices result in unfair and unequal treatment of bidders; thus, they impair effective

competition in public procurement. These practices are also against the basic procurement principles and objectives of achieving an efficient, economical, and effective tenders.

4.5.2 Decision, act or omission of the Accounting Officers and Reviewing Teams in handling complaints

The study found that, contractor's grounds of appeals are centered on three areas of decision making in handling public procurement complaints. First, the PE's failure to issue a notice of intention to award a contract to all bidders, including their reasons for disqualification contrary to the requirement of Reg. 231(4) of PPR, 2013, and or issuing of tender results after the expiry of the bid validity period. Second, PE's failure or refusal to respond to the contractor's application for administrative review and issuing a decision with the reasons for the disqualification of a bidder, which are contradicting. Third, failure to suspend the procurement proceeding while there are existing appeals against the same tender to the PPAA. The latter is evidenced in appeal case no. 11 of 2017-2018 after the revocation of the intention to award the contract by the PE. The appellant in his appeal submitted that: -

“.... the Respondent's failure to suspend the procurement process upon receiving complaint or an appeal contravened the requirement of Regulation 106(1) (a) and (b) of the GN. No. 446 of 2013. that, even after he has been notified about Appeal Case No. 5 of 2017-18 the Respondent still did not suspend or notify the Appellant about the existence of the said Appeal; instead, he continued to negotiate with them and issued an acceptance letter.” (Ref. Appeal case no.11 of 2017 – 2018)

Another indication of the argument and bases of appeals due to the decision, act, or omission by the PE was found in appeal case no. 46 of 2014-15, where the PE revoked the notice of intention to award a contract made to the appellant, claiming that the appellants tender was not in conformance with the requirements of the Donor and subsequent the appellants tender was rejected due to failure of the appellant to submit statutory annual returns to BRELA for 20years consecutive from 1992 up to 2013. The fundamental question in this act of the AO of the PE is as to whether it is possible for a PE to issue a letter of acceptance to the appellant before obtaining the “No objection” clearance from the Donor?

The findings of the study uncover the unlawful decisions, acts, and omissions of PE's AO's during handling procurement complaints whereby it has been vividly found that decisions which are contradicting themselves, unfound reasons for contractor's disqualifications, issuing decisions outside the bid validity period, and revocation of their decisions. These are

the foundation reasons for contractor's appeals in public procurement. These findings can be explained with caution regarding the unlawful decision of the PE's AOs, as not always they are unlawful.

4.5.3 Failure or refusal to make decisions within the time limit

The appellants posit that they appealed against the PE's Accounting Officers' failure or refusal to make decisions related to the applications for administrative review within the time limit as required by Sect. 96 (6) and (7) of the PPA, 2011. One appellant in three appeals cases 23, 24 & 25 of 2015-2016 appealed against the practice of the PE's AO failure to issue a written decision in response to the complaints submitted within the time required by the Act; as a result, they filed an appeal to PPAA. They argued: -

“The Respondent did not issue a written decision in response to the complaints within fourteen days as required by the Public Procurement Act No. 7 of 2011”” Having received no decision from the Respondent's Accounting Officer, on 18th January 2016, the Appellant lodged this Appeal.”(Ref. Appeals cases 23, 24 and 25 of 2015-2016).

One specialized contractor also appealed on the same base on the failure of the PE to issue the decision of the written complaint within the required time limit. The contractor averted in his appeal No. 36 of 2018-19 that: -

“That, the Respondent failed to issue a decision with respect to the Appellant's application for review within the prescribed time, as a result the Appellant lodged this Appeal”.

Some contractors appealed against the refusal of the PE's to make decisions regarding the intention to award the contract contrary to the requirement of Sect. 60(2) of the PPA so that if there are any complaints, be submitted for administrative review. In appeal case no. 29 of 2016-17, the notice of intention to award was claimed to be sent to the appellant in which the notice did not reach the appellant. The appellant submitted that, when he was making follow-up whether its bid was successful or not, they were informed that the contract had already entered into force as a result of the appeal: -

*“.... that, the Notice of Intention to award the Tender was sent to all tenderers who participated in the tender on 21st December 2016 through their postal addresses and a registered mail that was sent to the Appellant on 26th January 2017. the Appellant was informed that the contract had entered into force hence the Respondent becomes *fanctus officio* to any complaints lodged to him pursuant to Section 96(5) of the Public Procurement Act of 2011 as amended.”* (Ref. appeal case no. 29 of 2016-17).

Failure or refusal of the PE's Accounting Officers to issue written decision while handling administrative complaints, refusal of giving the notice of intention to award a contract to all bidders, and refusal to avail all reasons for disqualification of unsuccessful tenderers within the time limit are among the significant causes of the appeals by contractors. This implies that PE's contravened the requirements of Sect. 60 (3) of the Act and Regulation 231(2) and (4). The cited provisions require the AO of the PE that, upon receipt of notification from the TB within three days and upon satisfying himself that proper procedures have been followed, to issue a notice of intention to award the contract to all tenderers participated in the tender and including giving all reasons for disqualification of unsuccessful bidders.

4.5.4 Use of Discriminatory Evaluation, Selection, and disqualification criteria in tender documents

As mentioned in the literature review and the requirements of the PPA and regulations, tender documents issued by PE's must be clear in terms of their contents, eligibility, and selection criteria of a contractor as required in Reg.116 and 117 of GN. No.446/2013. The use of ambiguous, contradicting qualification and disqualification criteria is not compliant with the PPA provisions. The findings indicate that contractor's appeals are filed against the use of discriminatory evaluation, selection, and disqualification criteria in tender documents. Contractors submit to PPAA that these practices happen during the preparation of tender documents and evaluation of tenders. The following were the significant findings from appeals by contractors: -

- a) That, PE's set eligibility, selection, and disqualification criteria in tender documents purposely to exclude some contractors and, on the other hand, to favour specifically targeted contractors contrary to the requirement of Sect. 4A of the Act.
- b) That, during the post-qualification of tenderers, PE evaluation committees use the post qualification criteria, which are not stated in the tender documents contrary to the requirements of Section 53(1) and (2) of the Act and Regulation 224 (2) of the GN No. 446 of 2013.
- c) PE's fail to abide with the provisions and requirements of the Act for tenders, which are within exclusive preferences by modifying the tender document clauses. In appeal case no. 23 of 2019 - 2020, the appellant, who was a local contractor, appealed that, Although the IFT notice indicated that, source of the project was solely from the PE own sources of fund. Still, the tender data sheet was amended to exclude the domestic preference scheme.

“.....That, Clause 22 of the Tender Data Sheet (TDS) which modified Clause 31.1 and 31.4(b) of the Instruction To Bidders (ITB) indicated that domestic preference would not be applicable. ... such provision contravenes the requirement of the law as well as the guidelines issued by the Public Procurement Regulatory Authority to all procuring entities regarding applicability of preference schemes” (Ref. Appeal case no.23 of 2019-2020).

To justify this practice's existence, the PPAA also agreed with the Appellant arguments in which PE's tender document contained discriminatory selection criteria that contravened the requirements of Sections 70(2) and 72(1) of the Act in appeal case no. 23 of 2019-2020. The provisions require tender documents to be clearly worded so as to permit and encourage competition. Furthermore, the tender documents shall specify factors other than price, which may be considered in evaluating a tender, and how such factors may be assessed.

Despite the requirement of providing clear and unambiguous eligibility and selection criteria in tender documents, the appellants in the study appealed against the PE's failure to issue a complete tender document. The tender document ought to set out the selection criteria, as observed in the appeal case no. 47 of 2018 -2019, the document issued to contractors to quote was not a complete tender document capable of determining the selection and disqualification criteria. The appellant submitted that: -

“That..... the Respondent did not issue evaluation criteria; the only factor for determination was the quoted prices. taking into account that the works required a lump sum quotation and that no Bill of Quantities was issued.” (Ref. Appeal case No.47 of 2018).

Therefore, it is crystal clear that findings of this study on the use of discriminatory selection and disqualification have concurred with the conclusions from PPRA, (2015) and CAG, (2015) annual performance audit reports. The reports reported that the issue had been a recurrent practice by PEs in public procurement proceedings. The same has implications in unfairness and unequal treatment of bidders as a result of failure to achieve value for money in public projects discussed below.

4.5.5 Unfair and Unequal treatment of bidders during tendering

The appeal cases documents reveal that Contractors' appeals are also influenced by the practices of unfair and unequal treatment of bidders during tendering. Thirteen (13) appeal cases out of 59 appealed cases reported the issue. The complaints from appellants on unfair and unequal bidders' treatment were found in the following areas: First, in terms of not

including preference schemes to local contractors where required. Second, by using some criteria which favours individual contractors in tendering, and contravention of the requirements of Sect 4A of the PPA, 2011. Some contractors appealed against PE's failure to equally distribute the addendum, clarification, or modification of tenders to all bidders contrary to the requirement of Sect. 4A of the Act. In appeal case no. 06 of 2019-2020, the appellant appealed against the eligibility criteria set in the tender document to exclude specialist contractors in the relevant field of renewable energy to favour contractors registered for electrical works. These reasons were upheld by PPAA and ordered the PE to re-start the tender process. The appellant submitted that: -

“... that eligibility criterion was set purposely to exclude the type of contractors specialized in the said works and favouring type of contractors who are not registered for such specialized work.”(Ref. Appeal case no. 06 of 2019-2020).

Since the PPAA upheld the appellant's reasons for appeal regarding the unfair and unequal treatment of bidders in public tendering processes, it is the researcher's opinion that these practices indicate that PE's lack integrity by neglecting to discharge their duties diligently, a conduct which is unprofessional.

4.5.6 Use of Unapproved Standard Tender Document

Functions of PPRA, as provided in Sect.9 (d), require that the PPRA collaborate with the AG Chamber and professional bodies to prepare, update, and issue authorized versions of the STD to PEs. The study found that some of the Contractor's appeals were based on the PE's use of unapproved STD contrary to the requirements of Regulation 184 (3), (4) and (5) of GN. No. 446/2013. The tender documents used by the PE were the document issued by NCC for the procurement of Subcontractors in which it required the successful subcontractor to sign a contract with the Main Contractor instead of the PE.

Another contractor appealed against the act of a PE to float defective tender documents, which rendered difficulties not only to contractors to quote competitive prices but also fail to justify the equal platform for fair and evaluation of submitted bids. The defective tender documents contained specifications which specifically stated the contractor to quote brand items. The practice is contrary to the requirement of Sect. 70 of the Act read together with Regulation 184 of the GN. No. 446/2013.

Four appellants in their appeals were against the PE's act of using unapproved standard tender documents, especially on subcontract works. One appellant submitted that the issued tender document was defective as some technical specifications contradicted with other operating manuals. He argued: -

“That, the Tender Document is defective as some of the information provided in it differs from what is specified in the installation, operation and maintenance Manual of RTAB model 209.” (Ref. Appeal case no. 12 of 2017-18).

Although contractors are required to seek clarifications on matters that are unclear in the tender document to the PE, findings indicate that the contradictions in the chiller plant's specifications provided only a supply of brand materials and not equivalent approved. The Appeals Authority upheld the arguments of the Contractor and ordered the PE to prepare a complete tender document and re-tender afresh.

Another critical appeal case in this conduct was against PE's issuing tender documents, which were appropriate for use in quotations to solicit tenders under competitive methods. The tender document issued contained only an invitation to quote, drawings, and specifications contrary to the requirement of the Act and Regulations. The complaint was reaffirmed by PPAA while determining the appeal case whereby the entire tender process was nullified. The PPAA narrated in their analysis: -

“that, the Respondent did not issue the Tender Document to the bidders, which could set out the criteria for determination of the tenderers' responsiveness. The bidders were availed only drawings and Technical specifications of the works to be executed. The Appeals Authority is of the settled view that the Invitation to tender, drawings, and Technical specifications issued cannot be termed as the Tender Document.” (Ref. Appeal case no. 47 of 2018-19).

4.5.7 Failure to adhere to the principle of Achieving Value for Money

The practice was evidenced by some PE's notices of intention to award the contract to contractors whose tender readout prices were high compared to the appellant's tender and or to unqualified bidders. In order to achieve value for money objective in public procurement, PEs are required to evaluate and award a contract to the lowest evaluated bidder whose tender offers the most economical, effective, and efficient price. Practices that are contrary to the objective of achieving value for money infringe the public procurement's basic guiding principles. In the appeal case 10 of 2017 - 2018, the appellant argued: -

“That it’s tender had the lowest quoted price amounting to USD 18,877,997.00 and TZS 1,309,156,999.80 compared to the proposed successful tenderer who had quoted EURO 22,351,248.00 and TZS 3,671,608,308.00, which was expensive by 25% equivalent to TZS 14.3 Billion. The Appellant submitted that awarding the Tender to the highest tenderer is uneconomical and goes against the Government’s policy of value for money.”

Appeals against this practice, however, contradict the interpretation of the Act and Regulation when appellants submit that during tender opening, their bid readout price was the lowest. It implies that they are the lowest bidder, and they deserve the award of the contract. Appeal cases based on this argument were dismissed because it is not always that the lowest readout price implies that it qualifies for the award of contract. The public contract is awarded to the bidder whose tender is responsive to the technical requirements and commercial terms and conditions as required by Regulation 204 and 205 of the GN. No. 446/2013.

4.5.8 Alleged Corrupt Practices within PEs

In reviewing the literature, no data found to provide direct proof of the existence of the corruption practices by PEs during handling procurement proceedings. Only issues that impair transparency, conflict of interest, integrity, and unethical behavior of PE personnel while handling public procurement proceedings indicate the existence of corruption practices. The study reveals that the alleged corrupt practices within PE’s are the arguments brought before the PPAA by contractors who participate in public tenders.

The appellants submit that the conflict of interests between the PE’s personnel and the appellant himself as presented in appeal case no. 21 of 2018-19. In the said appeal, the appellant was involved in preparing the tender's technical specification and later invited to participate in the tender process. Finally, the PE intended to award the tender to the same bidder who had a conflict of interest. The PE later revoked the intention to award the contract by rejecting all tenders and subsequently seeking approval for emergency procurement from PPRA. The practice was the base of the appeal where the appellant argued that,

“.... the rejection of its tender on the ground that the breakdown of the chiller necessitated the need to proceed with emergency procurement by the Respondent’s; a conduct intended to fulfill personal interests.” (Ref. Appeal case No.21 of 2018-2019)

PPAA found the conflict of interest practice during the determination of the appeal whereby they conceded with the appellant's arguments. In their analysis, PPAA said that: -

“the act of involving the Appellant in the preparation and/or the interpretation of the technical specifications and at the same time inviting it to bid for the Tender to have contravened Clause 3.4 (g) of the Instruction to Tenderers (ITB) read together with Regulation 6(3)(b) GN. No. 446 of 2013 as amended.” (Ref. appeal case no. 21 of 2018-19).

Another contractor appealed against the PE decision to disqualify his tender based on the assertion that he possessed the unauthorized draft minutes of negotiations regarding the tender under dispute. The appellant submitted that those documents were availed to them by the PE's legal manager, who was soliciting money from bidders for the promise of facilitating the award of the contract (Ref. appeal cases nos. 30, 31, and 32 of 2016/17, pg. 3 &4). The appellant submitted that:-

“The Appellant, responded by explaining that the said draft minutes were obtained from the Respondent's Legal Manager, who was soliciting illegal monetary payment to enable him to facilitate the award of the contract to them. that, the Respondent's Legal Manager's act was reported to the Minister for Energy and Minerals as well as to the Prevention and Combating of Corruption Bureau (PCCB)”.

The study also found that Unethical behavior by the members of the evaluation committees of the PE. They were alleged intentionally to conduct arithmetic correction with intent to favour specific contractors. The appellants argued in their appeals nos. 19 of 2016-2017, and 18 of 2016 -2017, that, the arithmetical corrections made to some bidders were intended to favour some contractors due to drastic changes in the readout prices and intended to award. Hence they doubted if the tender evaluation was diligent. They argued that: -

“That, the tender was being awarded to the tenderer with the highest price implying there was fraud, embezzlements, and misappropriation of Government funds; that, the Appellant quoted the lowest price even after correction of errors made on his tender., to the Appellant's surprise the Respondent awarded the tender to the highest quoted tenderer.” (Ref. Appeal case No.18 of 2016 -2017).

“that, they were shocked to see major changes that have been done on the price of the proposed successful tenderer. Claiming that the price of almost TZS 14 billion (VAT inclusive), was unscrupulously reduced to TZS 9,930,059,618.54 (VAT exclusive).”

One foreign contractor presented unexpected findings in appeal case no. 26 of 2018-19. He submitted that the PE's evaluation team threatened one of his key personnel in the tender

under appeal during the post-qualification meeting. As a result, he denied the submission that he is the employee of the appellant. The act contravened the requirement of Sect. 53 of the PPA. They submitted before the Appeals that: -

“..... that, the Appellant had presented false information regarding Eng. Julius Shangari., the said engineer is its employee since it has an employment agreement with him. The said agreement provides that he would be performing the Appellant’s tasks upon being engaged. Eng. Julius Shangari, however, he denied such engagement after being threatened during the post-qualification meeting.” (Ref. Appeal case no. 26 of 2018-19).

The findings have justified that the existence of the conflict of interests, lack of integrity, and unethical behavior among the PE’s personnel who handle public procurement signifies the existence of corrupt practices, which are the reasons for the contractor’s appeals. The findings in this concern provide an avenue for further exploration because fraud and corruption are prohibitions under Sect. 83 of the Act as amended. The provision offers only measures to Contractors and personnel of the Contractor involved in fraud and or corruption. The provision is silent on the side of the PE except on the remedies provided in Sect.104 of the PPA for the PE personnel who commits the offence.

4.5.9 Other bases and arguments for Contractor’s Appeals

Other contractors' arguments in their appeals include unfair disqualification for non-compliance with the requirement of the tender document and appeal against the proposed award of the contract in a donor-funded project. The reasons for appeals lacked merits because their arguments were not supported by legal justification in the context of PPA and Regulation. However, during the appeals analysis, PPAA found severe irregularities in the tender evaluation process and a lack of independence of powers and functions of procurement units. Another appellant in appeal case No.09 of 2016 -2017 appealed against the PE’s failure to issue minutes of the pre-bid meeting within 3days as required by Regulation 189(4) of GN. No. 446/2013.

4.5.10 Summary of Findings on Specific Objective (i)

This discussion section looks at the findings presented above, intending to find how they provide an answer to the specific research question *“Which PE’s practices prompted contractors to lodge appeals in public procurement? And what are the arguments which*

support their appeals?” This section summarizes contractors' common appeal grounds in their appeals against PEs in awarding construction contracts.

The results of this study indicate that most contractors' appeals are against the non-compliances to the PPA and Regulations by PE's in the process of handling public procurement proceedings. The non-compliance practices observed are in the acts and omissions of the PEs tender evaluation committees during evaluating tenders. Second, the AO's and reviewing authority decisions while handling contractor's application for administrative review processes. Lack of integrity, transparency, and accountability of PE's evaluation teams is also frequently mentioned reason for appeals. Local contractors and foreign contractors appealed mostly on the questionable integrity of the PE's evaluation teams. In the appeal cases, contractors argued that their tenders are unfairly and unequally evaluated in terms of technical requirement responsiveness, and commercial terms and conditions. Moreover, the post-qualification of bidders also is conducted in contravention with the criteria used in the pre-qualification stage.

An important point to note here is that the public procurement process is guided by fundamental principles and has the objectives to achieve. These guiding principles are transparency, integrity, efficiency, economy, openness, fairness, competition, and accountability. The contractor's arguments in their appeal cases have indicated significant four dominant practices within PEs that infringe the basic guiding principles and objectives of public procurement, which in turn results into the appeals by contractors during the award of public contracts. First, the use of discriminatory selection, evaluation, and disqualification criteria in the tender document. The practice is done through the inclusion of qualification criteria which discriminate individual contractors to be selected and through customization of mandatory clauses where the preference schemes are to be applied. On the other hand, during the evaluation of tenders PEs evaluate tenders by using criteria that are not explicitly stated in the tender document to favour particular contractors. This practice concedes with the findings from the report of the CAG, 2015, and PPRA, 2015/2016, whereby PEs audited found to evaluate tenders using criteria that other than those stated in the tender document as a result of complaints, appeals, and contract award to unqualified bidders.

Unfair and Unequal treatment of bidders participating in the tender process also was found to be among the highly appealed practice followed by the use of unapproved standard tender

documents instead of those issued and approved by PPRA. Lack of transparency and accountability in handling the public procurement process and failure to adhere to the objectives of achieving value for money in terms of economy, efficiency, and effectiveness.

4.6 Specific Objective (ii): Examination of the PE's Violations of the PPA and Regulations

This specific objective aimed to scrutinize the appeal cases to explore and identify the PE's violations of the PPA and Regulations. The research questions asked by the researcher were, "*Which provisions of the PPA and Regulations are violated by PEs? Why and how these violations occur?*"

Analysis of appellants' submission and responses from the PEs and decisions, orders, and other relief issued by the PPAA under Sect. 97(5) of the Act used to find answers to the research questions. Findings from the appeal cases presented in Table 4.6 reveal that out of 59 appeal cases, 31 appeal cases were dismissed entirely for various reasons, including lack of merits in the eyes of the Act, prematurely filed to the PPAA contrary to the requirement of Sect. 96 (5) and 97 (2) of the Act and or filed outside timeframe as provided in Sect. 97 (2).

The appellant withdrew one appeal case after being informed by the PE that the rejection of his tender made was to comply with the directives of the Dar Es Salaam Regional Commissioner. Appeal case no.36 of 2018-2019 was not determined after the PPAA upheld the PE's two preliminary objections that the appellant lacked locus standi in the tender. Second, the PPAA lacked jurisdiction power to determine the appeal. The Appeals Authority found several non-compliance practices to the requirements of the provisions of the PPA and Regulations in 28 (47.46%) appeal cases; as a result, the appellant's arguments supporting their appeals upheld by the Appeals Authority.

Table 4.6 presents the distribution of decisions and orders issued by PPAA to upheld grounds of contractor's appeals. In Seven (11.86%) appeal cases, PE's were ordered to re-evaluate the tenders. PPAA, on the other hand, decided to nullify the tender processes of five (8.47%) appeal cases, and PE's of Four appealed tenders were ordered to re-tender the tenders afresh. The PPAA also partly upheld and considered the grounds of appeal to have merits in four

(6.78%) appeal cases but were dismissed. Lastly, PEs in four (6.8%) appeal cases were ordered to re-tender afresh with the observance of PPA requirements.

4.6.1 The PE's Non-compliance to the PPA, rules, and regulations while handling public procurement proceedings

The PPA and regulations require that, when handling public procurement works, PEs must comply and adhere to the provisions of the PPA, 2011 and PPR, 2013, and their 2016 amendments throughout the entire tendering proceedings and execution of the contract. The study found that most contractors appeal against the contravention and non-compliance to the requirements of Reg. 230 by conducting the examination, evaluation, and comparison of tenders inconsistent with the terms and conditions prescribed in the tender document. Second, Reg.106 (1) (a) and (b) GN 446 of 2013 when AO's handle the application for administrative review. Furthermore, it indicates that AO's of the PE's fail to suspend the procurement process while handling application for administrative review, Reg. 231(4) of the PPR, 2013, on failure to avail the Contractors all reasons for their disqualification and non-compliance to the requirement of Sect. 4A of PPA, 2011 on general principles and standards of procurement and disposal by tender (equality, fairness, and need to obtain Value for Money). Two foreign Contractors in JV appealed against failure by the PE's AO failure to suspend the procurement process while determining the application for administrative review in appeal case No.11 of 2017-2018. They argued that: -

“that, the Respondent's failure to suspend the procurement process upon receiving the complaint or an appeal contravened the requirement of Regulation 106(1) (a) and (b) of the GN. No. 446 of 2013.”

Furthermore, they submitted that even upon notification of the appeal's existence on the same tender, the PE continued to negotiate with them (appellants). This practice is contrary to the requirements of regulation 106(1) of the PPR, 2013. They emphasized:

“that, even after he has been notified about Appeal Case No. 5 of 2017-18, the Respondent still did not suspend or notify the Appellant about the existence of the said Appeal; instead, he continued to negotiate with them and issued an acceptance letter.”(Ref. appeal case No.11 of 2017-2018).

Most local contractors appealed against the PE's non-compliance to the PPA and Regulation by failing to apply exclusive preference schemes to local contractors. Exclusive preference

scheme to local contractors is a requirement for any project whose financial resources are exclusively provided by a Tanzanian public body and has a value not exceeding a threshold specified in the ninth and thirteenth schedule to regulation. On the contrary to the requirements of Sect. 55 (1) of the Act and Reg. 38 & 39 of PPR, 2013, during the evaluation of tenders where foreign firms participated in tenders reserved for local firms, PEs are found not to grant a margin of preference up to 10% to local contractors during comparison of prices.

Moreover, Contractors appeal against the intentional acts of PEs to modifying mandatory clauses in their tender documents to indicate that the exclusive preference scheme to local contractors is not applicable. One local contractor in appeal case no.12 of 2019-2020 argued:

“That, the Respondent’s acts of intending to award the tender to a foreign firm without due consideration to domestic preference while the contract is less than Tanzanian shilling ten billion contravenes the requirement of Section 55(1) of the Act, read together with Regulation 37 and 39 of the Regulations.”

They further argued that during the cost comparison of tenders, PE evaluation teams were required to grant a margin of preference up to 10% to local bidders who participated in the tender. They submitted that: -

“.... Regulation 151(4) of the Regulations requires preference to be applied in the evaluation of tenders under national competitive tendering where foreign firms have participated....., the cited regulation is in line with Section 55C of the Act, which requires procuring entities to grant margin of preference up to 15 percent in international or national competitive tenders., the Respondent failed to comply with such requirement.” (Ref. appeal case no.12 of 2019-2020).

Another significant finding within the Contractor's appeals was non-compliance with the requirements of the provision of the PPA and Regulations, on failure to comply with the requirements of Sect. 9(1) (c) and Reg.184 (4).The PE was accused of using a standard tender document which was not issued and authorized by PPRA and Sect.104 (1)(a) for conducting offence by giving information or evidence in purported compliance with a summons issued under the PPA. One Local contractor argued in his appeal that: -

“The Tender Document used by the Respondent is not a standard document for medium and large works posted in the Authority’s website in 2014. Thus, the Respondent had contravened Regulation 184 (4) of GN. No. 446/2013.” (Appeal case No.09 of 2016-17).

An unexpected finding from this study was revealed in appeal case no. 22 of 2013 -2014. The contractor appealed against the rejection of all tenders and refusal of the PE to issue the profound reasons for rejecting all tenders to bidders participated within the time frame. The decision to reject all tenders was made outside the bid validity period, and even upon the application for administrative review, the PE did not reply. The practice is contrary to the requirement of Sect. 59 of the PPA, 2011.

Therefore, from the above findings, it is crystal clear that there are non-compliances to the requirements and provisions of the PPA and Regulation practices within PEs. As a result of the appeal cases. These non-compliance practices are found in the evaluation of tenders, applicability of preference schemes in tenders reserved for local contractors, and decision making of the AOs in handling contractor's complaints. These results indicate that bidders are unequally treated in the tender evaluation processes, which leads to complaints and disputes. Not only that, but also the decision of PE's AO and their reviewing teams sometimes are issued contrary to the requirements of the Act when they conduct the review in bias.

4.6.2 Order to Re-evaluate Tenders

The most crucial point to note is that all appellants whose decisions of the PPAA uphold their appeal arguments prayed that the tender under dispute is awarded to them. On the contrary, the PPAA ordered re-evaluations of the tenders. PPAA ordered a re-evaluation of Seven (7) appealed tenders, with the observance of the requirements of the provision of the PPA. Other appeals were ordered to be re-evaluated either afresh by using an independent evaluation team or the price comparison stage with the observance of the Act and Regulations' requirements. The reasons which supported the decisions include; failure by the PE's evaluation committees to evaluate tenders in a common basis as required by Sect.74(1) of the Act, refusal to grant a margin of preference up to ten percent (10%) during price comparison for a tender reserved for local firms where foreign firms participated. The practice is contrary to the requirement of Sect.55(1), 55D read together with Regulation 34, 151(4) of the GN.446/2013. The other reason which compelled the PPAA to issue an order to re-evaluate tenders includes the PE's evaluation committee's conduct of evaluating tenders in contraventions with the terms and requirements of the tender documents contrary to Reg, 203 (1) of the GN. No. 446 of 2013. For clarity, the cited regulation requires that: -

“Reg.203(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.”

In one appeal case, although the appellant was fairly disqualified for partial pricing of the BOQ and failure to initial the erasures in the tender document. The reason for disqualification holds water in the cause of law. However, the same omission was committed by the proposed successful bidder. Therefore, the PPAA ordered the PE to re-evaluate tenders for two reasons. First, violation of Sect.74(1) of the Act by evaluating tenders is not in common basis; thus, it intended to award the contract to the unqualified bidder who was supposed to be disqualified at the preliminary evaluation stage as it was done to the appellant. Second, violation of Reg. 30 of GN. No. 446/2013 read together with the 7th Schedule of the Regulations. The Appeals Authority observed that the threshold within which the PE intended to award the tender falls under the margin of exclusive preference for works. Hence the Appeals Authority concluded that the evaluation of the tender under appeal was seriously flawed, and the only remedy was to re-evaluate tenders afresh. PPAA reiterated in their conclusion: -

“... that since the evaluation of the tender was seriously flawed; the Respondent’s decision to award is quashed, and it is hereby ordered that the Evaluation process be conducted afresh..” (Ref. appeal case No. 41 of 2016-17).

It was interesting to note that the PPAA ordered a re-evaluation of tender in another appeal case for the same omission of the PE to disqualify the appellant on the ground of partial pricing of some items in the BOQ. The PPAA observed the partial pricing of some items in the BoQ also in the proposed successful bidders tender. Hence, it concluded that the PE failed to evaluate tenders on a common basis as required by Sect. 74 of the Act. On the other hand, the PE was unable to observe and adhere to the margin of exclusive preference of works as required in Regulation 30 and 43 and cognizance of the requirement of Sect. 55D of the Act.

Again, in appeal cases, nos. 23, 24, and 25 of 2015-16, the PPAA ordered the re-evaluation of tenders in three lots with the observance of Sect. 72 and Sect.74 of the Act and Reg. 203 (1) requirements using a new independent evaluation team. The independent evaluation team required to exclude members involved in the first and second evaluation teams. The Appeals Authority also ordered the PE to compensate the appellant after observing that the appellants (Two Contractors in JV) were disqualified during preliminary evaluation and post-

qualification for unfound reasons. These disqualification reasons were; first, the PE unfairly disqualified the appellant during preliminary evaluation for failure to quote the price for a 4WD Double Cabin pick up, the cause which was contradicting with PE's tender document ITB clause 16 and contrary to Regulation 203 (1) of GN.NO. 446/2013. The cited regulation requires evaluation to be consistent with the terms and conditions prescribed in the tender document. Such an evaluation is to be carried out using the criteria explicitly stated in the tender documents. Second, The PE unfairly disqualified the appellant by conducting post-qualification, the requirement which was not specified in the BDS. Nevertheless, the PE's post-qualification did not refer to the bidder's change of status from the pre-qualification stage instead to the ongoing contracts. The disqualification criteria which was contrary to the requirement of Sect. 53 (4) and (5) read together with Sect. 52 of the Act.

PPAA also quashed and set aside the intention to award the contract to the proposed successful bidder and upheld the prayers of two appellants (local contractors) by ordering the PE to re-evaluate the tenders from the price comparison stage in compliance with the PPA and Regulations. The order was issued after observing that the PE erred in law by refusing to grant a margin of preference up to 10 % during the price comparison of tenders to local bidders where foreign firms participated contrary to the requirements of Section 55(1) read together with Regulations 38, 39(1), and 151 (4) of the GN446/2013. In the appeal case no. 27 of 2015-2016, the PPAA ordered: -

“..... that Respondent erred in law for his refusal to grant a margin of preference to local bidders as required by the law. the intention to award the contract to the proposed successful bidder is hereby quashed and set aside. The Appeals Authority upholds the prayers by the Appellants by ordering the Respondent to conduct a re-evaluation of the tenders from the price comparison stage in compliance with the law”.

An unexpected finding in the study was found in appeal case no. 9 of 2019-2020, whereby the independent review panel formed by the PE under Sec.96 of the PPA acted ultra vires by considering other matters which were not part of the complaint. The independent review panel turned itself into an evaluation committee by re-evaluating the tenders of the unsuccessful bidders only. Then came out with the new findings in the appellant's tender being the failure to initialize the first page of the form of tender. However, the same fault was also found by PPAA in the proposed successful tenderer's Tender Securing Declaration,

Declaration on Litigation, and Special Power of Attorney, which were all amended but not initialed. The PPAA reiterated: -

“The Appeals Authority failed to comprehend the Respondent’s motive in this regard, as it re-evaluated the bids which were found to be unsuccessful while handling their application for review and failed to re-evaluate the bids which were found to be successful to satisfy itself if the award has been proposed to eligible tenderers.” (Appeal case no. 9 of 2019-2020).

The PE’s conduct in this tender was in contravention with Sect. 4A of the Act regarding fairness and equal treatment of bidders. Hence, the PPAA ordered the PE to re-evaluate all the tenders in observance of the law.

The findings above give the impression that the practices of PEs in handling evaluation are questionable because they are conducted contrary to requirements of the PPA, 2011, and PPR, 2013, as amended. Most contractors are unfairly disqualified, and they are treated unequally; hence commercial competition is impaired. The integrity of the PE’s evaluation committees is also questionable as they behave unethically during handling tender evaluations.

4.6.3 Order to Re-tender with the observance of the Act

Other crucial findings in this study were the PPAA orders to the PE’s to re-tender afresh the appealed tenders. The reasons behind these decisions were; first, the inclusion of the unambiguous selection and evaluation criteria in the tender document. The criterion in one appeal case was provided in the invitation to tender but not amplified in the ITT or BDS, and it required that; *“contractor’s eligible should be registered or capable of being registered as electrical contractor class III and above.”* This criterion was contrary to the requirement of Sect.70 (2) and 72 (1) of the PPA because the tender under dispute was related to the procurement of the Contractor to execute a solar power project.

The second reason was PE’s violation of Sect.70 of the Act and Regulation 184 by failing to issue a well-drafted tender document. The specifications included in the tender document were contradicting with what PE sought from bidders; as a result, they did not encourage commercial competition among bidders. The third reason was the PE’s TB act of issuing the decision to reject all tenders and AO’s failure to notify bidders on the decision within the Bid

validity period, contrary to the requirements of Sect.59, Sect. 60 (14), and Sect.71 of the Act. Lastly, the PPAA ordered afresh re-tendering of the tender after the failure of the PE's to justify the intention to award a contract to a proposed successful bidder who was the fifth-ranked bidder. Evidence is warranted by the PE refusal to submit to the PPAA the two re-evaluation reports to ascertain what transpired in the re-evaluation, which resulted in the recommendation of the contract award to the fifth-ranked bidder. In Appeal case no.35 of 2018-2019, the Appeals Authority ordered: -

“.... that after taking serious consideration on the re-evaluation process and ... the fact that the whole process of re-evaluation which led to the award of the tender to is not clear and no report is available to ascertain what transpired, the Appeals Authority is of the firm view that a re-tendering process should take place.”

This study produced findings that corroborate with PPAA Rule No. 6 of GN.411 of 2014, which require that the appeal may arise, among other reasons, from the inclusion of unacceptable provisions in the tender document. An implication of this is the possibility that PE's practice in preparing tender documents and evaluation do not comply with the requirement of the PPA as a result of the appeals.

In appeal case no.12 of 2017-18, the appellant was fairly disqualified because of failure to comply with the additional information on the tender document's technical specification. However, the PPAA, before issuing the decision, they noted with concern on the unclear motive of the PE in his delicate proceeding to use the contradicting technical specification in the tender document. The PPAA said with the respect that: -

“..... the PE required TRANE Model RTAB 209 chiller for purposes of replacing the existing one, we fail to comprehend the Respondent's motive of advertising this Tender the way they did by indicating that they wanted to be supplied a chiller with same or equivalent specifications.”

Furthermore, they emphasized that: -

*“...since the PE wanted to replace the existing chiller with the same model, they ought to have procured the same chiller from the same manufacturer by using **an ideal and acceptable method of procurement and not open national competitive bidding method** they had used....., the Tender Document should have been clear that the equivalent chiller should be compatible with the existing facilities by the TRANE Model RTAB 209.”* (Appeal case no.12 of 2017-18).

The PPAA also reviewed the technical specifications included in the tender document and found ambiguities in their capability to enable the bidders to provide competitive prices.

They noted with concern: -

“.... that some of the chiller’s specifications contained in the PE’s Tender Document were different from what has been provided for in the said manual. For example, the manual indicates that the cooling capacity (output power) is 146Kw while the Respondent has specified 55Kw per compressor, hence per two compressors, the required cooling capacity is 110Kw., the full load current specified in the Tender Document per each compressor is 90Amps, for two compressors, it is 180Amps while the manual specified 137Amps for all compressors. ...that the Respondent’s requirements were not compatible with the manual for TRANE Model RTAB 209, that the Respondent couldn’t get the bidder who would comply with their Tender requirement while the specifications issued were not in accordance with manufacturer’s specifications”.

Finally, the PPAA concluded by narrating that: -

“... that, the Tender Document was not clear on what was to be shown or complied with by the tenderers concerning the additional information. The said requirements were vague and unclear. ... the Respondent’s Tender Document did not conform to the requirements of Section 70 of the Act and Regulation 184 of GN No. 446 of 2013, which require the Tender Document to be worded in a clear and precise manner that will encourage competition”.

The PPAA, on the other hand, ordered re-tendering of the tender after observing that the PE’s evaluation committee unfairly disqualified the appellant during post-qualification by using allegations that were pending at PCCB. The same was not among post qualification criteria stated in the tender document. Similarly, in appeal case no. 35 of 2018-19, the PE failed to avail the PPAA with the re-evaluation report conducted, which led to the award of the tender to the proposed successful bidder, who, in the first evaluation, was the fifth-ranked bidder.

The Appeals Authority decided that; -

“..... after taking serious consideration on the re-evaluation process and in view of the fact that the whole process of re-evaluation which led to the award of the tender to J.H.S Enterprises Ltd is not clear and no report is available to ascertain what transpired, the Appeals Authority is of the firm view that a re-tendering process should take place.” (Ref. Appeal Case no. 35 of 2018-19).

Findings from the Appeals Authority's observed issues and orders affirm that the appeal cases against PE in awarding the public contracts are valid. The PPAA orders justify that there are violations of the provisions of the Act and regulations by PEs. Nevertheless, these practices are centered on the tender evaluation process and decision making of PEs. These findings are collated with the conclusions of specific objective one that, lack of integrity, transparency, and accountability of PE's in handling tenders' evaluation are the reasons prompting contractors to lodge appeals.

4.6.4 Orders to Nullify the Tender process

All five appellants in this area prayed for re-tendering and or award of contracts; the PPAA, however, nullifies those tender processes because PEs refused to use the standard tender document as required by Reg.184(3) and (5) of the GN.No.446/2013. Also, failure by the PE to prepare a complete tender document as required by Sect. 70 of the PPA read together with Regulation.183(1), 184 (1), (3), and (5) of the GN. No. 446/2013, which requires PE's to use appropriate solicitation documents when soliciting tenders from the bidders. Furthermore, the provisions require that tender document issued to set forth clearly the criteria to be used in determining tenderers' responsiveness.

The PPAA ordered to nullify the tender process of one tender after found that the PE intended to award the tender to an unqualified bidder who was supposed to be disqualified at the preliminary evaluation stage. Moreover, all bidders who participated in the tender (Ref. appeal no.22 of 2017-2018) were required to be all rejected under Sect. 59 of the Act due to non-responsiveness to technical requirements and commercial terms and conditions. Furthermore, the tender process lacked competition after constituted only two bidders.

The possible explanations for these findings are that PE's contravene not only the requirements of Sect. 55 & 55D of the Act in the applicability of exclusive preference scheme but also Sect.70 and Regulation 183(1), 184 (1), (3), and (5) of the GN. No. 446/2013 as amended while preparing the contents of tender documents. The evaluation processes of tenders are poorly conducted by PE's; thus, a notice of intention to award a contract is issued to unqualified bidders. These findings must be interpreted with caution because not all PE's fail to comply with the PPA and Regulations requirements.

Interesting findings were found in appeal cases nos. 42 of 2018-19, and 12 of 2019-20 in which one local contractor appealed in both tenders against PEs in the area of the applicability of exclusive preference schemes to local contractors. The PPAA decided to nullify the tenders after found that the PE's failed to justify why they opted to float tender under ICB contrary to the requirement of Sect. 55 of the Act and Reg.39 of the PPR,2013. In the said appeals, the tender estimates were below the limit threshold provided in the Ninth and Thirteenth schedule of the regulation. Furthermore, the PE lacked legal justification to award the tender to a foreign firm. The PPAA concluded in their ruling that: -

“... the Tender process was not conducted in compliance with the set principles of the law. ... the Respondent failed to justify the modality it had used in floating this Tender using International Bidding Procedure. ...the whole Tender process was a nullity, and the subsequent award of the Tender to a foreign firm lacks legal justification.....the Appeals Authority hereby nullifies the whole Tender process and order the Respondent to re-start the tender process in observance of the law.”(Ref. Appeal case no.24 of 2018).

Again the PPAA found the tender process conducted by the PE to be a nullity in the eye of law after observing the similar contravention of the requirement of Section 55(1) of the Act and Regulation 39 (1)(3) on the applicability of exclusive preference schemes to local contractors. The PE floated the tender under ICB and went further to amend the STD's clause to indicate that domestic preference was not applicable. The act was done while knowing that the project fund was solely from PE's own fund's sources. As a result of an intention to award a contract to a foreign company in which, after failing to justify, he prayed for the tender's re-evaluation, a prayer which was quashed. The PPAA reiterated on the PE argument, thereby asserting that: -

“... the Respondent's argument that the only anomaly in this tender process was its failure to apply a margin of preference in evaluating the tenders by the foreign firms. The Appeals Authority disagrees with the Respondent's since the issue is not the applicability of margin of preference to foreign firms but that this Tender ought to have been exclusively reserved for local firms.” (Ref. Appeal case 42 of 2018-19).

The PPAA emphasized further that:

“..... assuming that the Respondent had justification to advertise this tender nationally instead of reserving it for locals firms, still it could have not applied the margin of preference.Clause 22 of the TDS clearly indicated that domestic preference and margin of preference were not applicable. the Appeals Authority rejects the Respondent's prayer to order re-evaluation of tenders. that the

Tender process was conducted in contravention of the law.” The Appeals Authority hereby allow the Appeal and nullify the Tender process.”

Another finding was observed in the appeal case no. 47 of 2018-2019, whereby the PE failed to prepare and issue a tender document that complies with the requirement of Sect.70 of the Act and Reg.183(1), 184(1)(3) and (5). The PE used a procurement method that was not appropriate for the tender; the same was exacerbated by the absence of a bonafide tender document. The PE issued only drawings and specifications and invited bidders to provide quotation contrary to Regulation 152 on restricted tendering requirements. The PPAA dismissed the appeal and ordered the PE to prepare the appropriate tender document and call for fresh tenders.

The findings reveal an exceptional order to nullify the tender process to the PE who issued a tender document that was not an STD issued by PPRA procurement of a Subcontractor. The tender document issued was against the requirement of Reg.184 (3), and the same didn't comply with the condition of Reg. 233 (1) of the PPR, 2013. In appeal case no.9 of 2016-2017, the PPAA concluded by nullifying the entire tender process and order the PE to re-start the tender process by using the authorized standard document.

The Appeals Authority further nullified the tender process after establishing that the tender evaluation process was conducted in violation of Reg. 204 and 205. PPAA noted with concern that if the evaluation was conducted in compliance with Regulation 204 and 205 of the GN. 446/2013 (i.e, checking of substantial responsiveness to commercial terms and conditions and technical requirements). Then, all tenders would have been rejected under the virtue of Sect. 59 of the Act. The PPAA in their analysis explained further: -

“.....the respondent's evaluation was differently....that after conducting the preliminary evaluation the respondent didn't conduct technical evaluation of the tenders instead he did arithmetic corrections of errors of the two bidders and ranked them. This anomaly not only contravened the referred ITT clauses and cited provisions of the law but also made the respondent to conduct post-qualification of both bidders contrary to clause 33.3 of ITT and Sect.53 of the Act and Regulation 208 of GN No.446/2013.” (Ref. appeal case no. 22 of 2017-2018).

Having observed the study's findings regarding the decision and orders issued by PPAA, it is crystal clear that PE practices in handling procurement works contravene with the

requirements and provisions of the PPA and Regulations in the following ways. They were issuing incomplete tender documents, failure, or refusal to observe the applicability of exclusive preference schemes to local contractors during the floating and evaluation of tenders. Furthermore, the issue of irregularities of the evaluation exercise persists within PE's evaluation committees.

4.6.5 Order to Nullify the Notice of intention to award a contract, compensate the appellant, and Proceed with the award to the Appellant

In appeal case no. 39 of 2018-19, the Appeals Authority decided to nullify the notice of intention to award a contract to the proposed successful bidder (joined as the 2nd Respondent) and order the PE to proceed with the tender process where it ended with the appellant. The PPAA issued an order after establishing that the PE unlawfully revoked the notice of intention to award a contract made to the appellant under Regulation 231 (2) of GN. No. 446 of 2013. Furthermore, the Appeals authority found that the PE revoked the first notice of intention to award a contract to the appellant after it had issued the 2nd Notice of Intention to award the Tender to the 2nd Respondent (proposed successful bidder).

Again, the unlawful revocation of the notice of intention to award a contract to the appellant and subsequently proposal to award a contract to the 2nd Respondent resulted from the PE's two negligent acts. First, seeking clarification from bidders during the evaluation process which aimed to change the substance of the tender contrary to the requirements of Clause 27.1 of the ITB, which reads: -

Clause 27.1 “.....the Purchaser may, at its discretion, ask any Bidder for a clarification of its bid,The Purchaser’s request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the bids....”

The act of seeking clarification materially altered the tender by the 2nd Respondent, who had earlier been disqualified for indicating in its bid that construction materials are CIP Dar es salaam instead of Arusha. PPAA asserted that the act of the PE intended to make the non-responsive bid by the 2nd respondent responsive. Contrary to the requirement of Clause 28.3 of ITB. The PE's act affected the appellant's competitive position and that of other bidders who were responsive to the tender needs contrary to Sect. 4A (3) of the PPA.

In resolving the issue, PPAA observed that: -

“..... that the bid by the 2nd Respondent was non-responsive at the beginning but was later on made responsive by the 1st Respondent through clarification it had sought contrary to its Tender Document and Regulation 203(1) of GN.No.446 of 2013.”(Ref. appeal case no. 39 of 2018-19).

Finally, the PPAA found the appeal to have merits and decided to nullify the notification of award to the proposed successful bidder and order the PE to proceed with the contract award process to the appellant. The Appeals Authority said and ordered: -

“the Appeals Authority therefore, nullifies the Notification of award made to the proposed successful tenderer, the 2nd Respondent. The 1st Respondent (PE) is ordered to proceed with the tender process from where it ended with the Appellant and to secure the necessary internal and external approvals before issuing an award.”

4.6.6 Partly upheld the Appeal and Dismissed

The PE in appeal case no. 11 of 2017-18 violated, Sect.100(1) of the Act and Regulation 106 (1) of the GN. No.446/2013 by neglecting to suspend the procurement process while there was an existing appeal no.5 of 2017-2018 on the same tender at PPAA. The violation resulted in PPAA to uphold the monetary compensation prayer submitted by the appellant. Conversely, the PPAA dismissed the appeal case on the ground that the PEs act of revoking the notice of intention to award the contract made to the appellant was valid. The said appeal case's findings impress for in-depth exploration because it involves three tenders, which contain 28 lots. The appeal case had a historical relation with the appeal cases nos. 30, 31, and 32 of 2016-2017, which were all dismissed, and appeal case no. 5 of 2017-2018 whereby the PE was ordered to proceed signing a contract with the appellant on the ground that the rejection of the appellant's tender was erroneously made.

On the note, while the appeal case no. 5 of 2017-2018 was determined at PPAA, the PE did not suspend the procurement process. As a result, he issued another notice of intention to award the Contract to the appellant of case No.11 of 2017-2018. To implement the PPAA order on appeal case no.5 of 2017-2018 under Section 97(8) of the Act, the PE revoked the

notice of intention to award a contract to the appellant in case no. 11 of 2017-2018, which resulted to the appeal.

Contrary to the requirement of Sect.100(1) of the PPA, the PE's act to refuse or neglect to suspend the procurement process after receipt of the complaint from the appellant in appeal case no. 5 of 2017-2018 warranted the PPAA to uphold the monetary compensation prayed by the appellant. However, the appellant failed to justify the need for compensation amounting to TZS. 150,000,000.00. The Appeals Authority said: -

“..... that, the respondent didn't suspend the procurement process after receipt of the complaint from Authority about the existence of Appeal No. 5 of 2017-18.M/s MF Electrical Engineering Ltd and M/s Gesap Engineering Supplies Group JV or even after being notified by the Appeals Authority.... the Respondent conceded to have not suspended the procurement process. the Respondent's act in this regard to have contravened the requirement of Section 100(1) of the Act. The said provision requires the Accounting Officer to suspend the procurement process pending determination of the complaint or an Appeal. To the contrary, the Respondent's Tender Board meeting held on 30th June 2017, approved award of the Tender to the Appellant and they proceeded with negotiation on 10th July 2017 and subsequently issued an acceptance letter to the Appellant on 19th July 2017. The Appeals Authority finds the Respondent's act to have not only contravened the law but also to have caused unnecessary costs to the Appellant”.

In their conclusion of findings, the PPAA summarized and stated that: -

“..... the Appeal partly to have no merits as the withdrawal of the award made to the Appellant was justified, the Appeal is hereby dismissed and the Respondent is ordered to proceed with signing of the contract with M/s MF Electrical Engineering Ltd and M/s Gesap Engineering Supplies Group JV. Regarding the costs incurred by the Appellant due to the Respondent's failure to suspend the procurement process,, the Appellant is entitled to compensation., pursuant to Section 97(5)(f) of the Act, the Appeals Authority orders the Respondent to compensate the Appellant a reasonable sum of TZS 2,200,000.00 as per the following breakdown; i) TZS 200,000.00 appeal filing fees, and ii) TZS 2,000,000 legal fees.” (Ref. appeal case no. 11 of 2017-2018).

Findings of the study in the above appeal in which the compensation prayer was upheld reflect that PE's tender evaluation process, which is expected to lead to a lawful decision, is conducted in contravention with the requirement of the Act and Regulations. Moreover, the PE's unlawful decision in handling procurement complaints has a stake in the appealed tender awards.

4.6.7 Appeal Dismissed and Order to Re-tender overtaken by events

PE in appeal case no. 32 of 2018-19 violated Sect. 72(2), and Sect.74 of the Act read together with Regulation 203(1) of the GN. No. 446/2013. The PE's evaluation committee did not interpret the bidder's qualification criteria outlined in the tender document. As a result, they recommended a contract award to an unqualified bidder whose 3 years' experience in executing the works was contrary to 8years', the tender document's requirement. Findings indicate that events overtook the appellant's first ground of appeal after the PE conceded that there was an oversight by the evaluation committee regarding the qualification criteria, as a result of the intention to award to the unqualified bidder. However, after noting the anomaly of the evaluation of tender that PE suspended the tender process, and they intended to re-tender. The PPAA narrated that: -

“The Respondent readily conceded to the anomaly in relation to the first ground of appeal., the Respondent stated that there was an oversight during the tender evaluation process whereby the focus was made on the experience of technical personnel in lieu of the Company's experience. The Respondent concluded by stating that the proposed successful tenderer did not qualify for the award of the Tender. It was also stated by the Respondent in the course of hearing of the appeal that the Tender has been suspended, and it intends to re-tender.” (Ref. Appeal case no. 32 of 2018-19).

Although the contract was intended to be awarded to the unqualified bidder who was about to benefit from the PE's evaluation committee's faults, the appellant, on the other hand, failed to comply with the technical specifications of the tender document. Hence the appeal lacked merits and was dismissed entirely.

4.6.8 Appeal Upheld but Donor Decision Prevailed

The Appeals Authority pointed out that the PE in the appeal case no. 31 of 2015-2016 contravened with the requirement of the PPA in the following provisions: -

- (i) Violation of Sect. 41 and Sect. 45 of the Act by interfering with the function of the Evaluation Committee and PMU. The provisions require the independence of actions concerning their respective roles and powers. Any disagreement between AO, PMU, and Evaluation Committee concerning any decision about the recommendation for the award of contract shall be resolved using the procedures set out in the regulations.

- (ii) AO's contravention of Sect. 40(1) of the Act by receiving the 2nd evaluation report, which ought to have been submitted to the PMU. The provision requires that the evaluation report be submitted to the PMU after completion of the evaluation.
- (iii) After unlawful receiving the 2nd evaluation report, which ought to have been submitted to the PMU, un-procedural, and contrary to Sect.40 (2) of the Act, the AO of the PE appointed a review team which evaluated tenders up to post qualification of all bidders. Finally, they came out with the 3rd evaluation report. Sect.40(2) requires that members of the evaluation committee be recommended by PMU according to the Regulations and approved by the AO.
- (iv) The PE contravened Regulation 224 (1) by conducting post-qualification to all bidders instead of the lowest evaluated bidder. Furthermore, the PE contravened their tender document explicitly Clauses 31.1 and 31.2 of the ITB, BDS, and Paragraph 2.58 of the World Bank Procurement Guidelines. Contrary to Regulation 220, Three evaluation reports were submitted to the PE's TB, including the third evaluation done by the review team appointed by the AO, which conducted post qualification to four bidders instead of the lowest evaluated bidder.
- (v) The Project Implementation Unit and experts from the Ministry of Lands turned themselves into Evaluation Committee by conducting the review and incorporating the Bank's comments, which were issued without submitting them to the PMU. The PMU would have worked on the Bank's comments through the Evaluation Committee duly appointed, and later submit them to the TB for approval. As a result, there were fourth, fifth, sixth, and seventh Evaluation Reports, which were the basis for the Bank to grant the "No Objection." The fourth, fifth, sixth, and seventh evaluation reports were submitted to the World Bank without the Tender Board's prior approval. The acts of the PIU of the PE contravened Sect. 41 of the Act, which guides on the independence of functions and powers of the Accounting Officer, the Tender Board and the Procurement Management Unit.
- (vi) The PE also contravened Sect.33(1) of the Act, which requires TB to approve the contract award recommendations before the same is communicated to bidders. On top of that, The PE contravened Reg.11(2) of GN. No.446/2013, which requires the donor-funded projects to obtain internal clearance before acquiring external approval.

- (vii) Members of the evaluation committees did not sign personal covenants before conducting evaluation so as to declare that they do not have any conflicts of interest with any tenderer contrary to Section 40 (6) of the Act.

From the above-observed contraventions of the Act and Regulations, the PPAA in their analysis found that the tender evaluation was not conducted per the law, thereby reaching an unlawful decision. The tender evaluation was vitiated with irregularities and contravention of the requirement of Sect.74 of the Act. The Appeals Authority would have quashed the decision by the PE but for the provision of Regulation 11(3) of GN No. 446 of 2013 which provides as per quotation below: -

Reg.11(3) "To the extent that the clearance or approval of the appropriate internal approving authority conflict with the external clearance or approval of an external approving authority arising out of the loan or credit or grant agreement, the clearance or approval of the external approving authority shall prevail, but in all other respects, the internal clearance or approval shall prevail. Unhappily the decision by the World Bank prevails".

The acts of the PE in this appeal case provide strong justification that the evaluation of tenders in some instances is intentionally conducted to favour specifically targeted contractors. Therefore, it is crystal clear that fairness, equality, and commercial competition are impaired during the evaluation of tenders either at preliminary evaluation, the detailed evaluation, and post-qualification. The integrity and unethical conduct of the evaluation committees formed by the PE's are not left to blame. The independence of functions and powers of the Evaluation Committees, TB, and the AO are not observed when PE's personnel intend to fulfill personal interests. The act is further implicated by the Donor's action to contravene the requirement of the tender document by granting a no-objection clearance through relying on PE's evaluation reports, which were not approved by the TB. The findings concur with the conclusions of the Osei-Tutu, Ameyaw, and Mensah, (2011), who concluded that the evaluation of tenders is the area that is prone to non-compliance behavior by PEs. The issue which exists even in donor-funded projects.

4.6.9 Order to Post qualify the Appellant

The order was issued following the PE failure to evaluate the appellant's tender diligently and on a common basis. The PE's evaluation committee erroneously evaluated the appellants

tender as VAT exclusive instead of VAT inclusive. The result put the appellant's tender to be the second-ranked bidder. The PE act on this appeal contravened the terms of the tender document after failing to comply with Clause 14.3 of the ITB, Items 19 (a) (b), and (c) and 20 of the Preamble to the BoQ. PE's failure to comply with his tender document requirements contravened Reg.206 (1) of the GN.No.446/2013 as amended. The cited regulation requires determination of tenders' responsiveness to be based on the tender itself without any extrinsic evidence. Similarly, the PE contravened Section 72(1) of the PPA and Regulation 203 of GN. No. 446/2013, which provides that PE shall state clearly the basis for tender evaluation and determination of the lowest evaluated tender in the Tender Document.

Moreover, the TB of the PE approved Award of the Tender to the proposed successful tenderer without stating whether the price was VAT inclusive or exclusive; neither does the Notice of Intention to Award the Tender. The PPAA noted with dismay concern in the motive of the PE and said: -

*“..... that the tender by the successful tenderer was at TZS. 667,452,250.00 VAT inclusive and not TZS. 565,637,500.00 VAT inclusive. Thus the Respondent either **intentionally or unintentionally erred** by reducing the price of the proposed successful tenderer from TZS. 667,452,250.00 to TZS. 565,637,500.00 VAT inclusive.”* (Ref. appeal case no. 26 of 2016-2017).

Besides, the PPAA, before nullifying the intention to award to the proposed successful bidder and order to post qualify the appellant, they clarified that the tender of the appellant was the lowest compared to the proposed successful bidder. Again they narrated that: -

“The quoted prices VAT inclusive by the proposed successful tenderer and that of the Appellant are TZS. 667,452,250.00 and TZS. 575,224,500.00 respectively. Prices VAT exclusive by proposed successful tenderer and that of the Appellant are TZS. 565,637,500.00 and TZS. 487,478,390.00. Therefore, without a scintilla of doubt, the Appellant's price is the lowest as it is lower than that of the alleged successful tenderer by TZS. 78,159,110.00.”

The order issued by PPAA to post qualify the appellant reflects that there are intentional practices of PEs that violate the provisions of the PPA and regulation during the evaluation of tenders. The possible explanations for these findings are that the evaluation of tenders by PEs is conducted to fulfill personal interests in the contract award.

4.6.10 Order to Sign Contract with the Appellant

Through the powers conferred by Sect. 97(5) of the Act as amended, the PPAA issued an order to the PE to sign a contract with the appellant in appeal case no. 08 of 2017-2018. The order issued after observing that the order to post qualify the appellant issued to PE on appeal case No. 26 of 2016-17 on the same tender was refused or neglected to be implemented by the PE. Instead, the PE decided to re-evaluate all tenders, came up with new reasons for disqualifying the appellant's tender, rejected the appellant's tender, and decided to re-tender basing on the grounds that the bid validity period has expired.

Even upon being served, the notice of appeal case no.08 of 2017-2018 under Sect.97(4) of the Act and PPAA Rule 12(2) of GN. No. 411 of 2014, the PE refused to submit a statement of reply to the issues raised by the appellant. By the efforts of the PPAA, the PE made oral reply to the issues raised by the appellants. The Appeals Authority found that the Appellant was unfairly disqualified during the second evaluation because the PE failed to justify the reasons used to disqualify the appellant's tender. The PPAA concluded its observation by emphasizing that: -

“.... the tender proceedings availed by the Respondent for the second time that instead of conducting post qualification as ordered, the Respondent went to conduct evaluation afresh for all bids. that the Respondent had a deliberate mission of not only delaying the tender process but also of not executing a lawful order given by this Appeals Authority for reasons best known to him.Agreeing with PE proposition for re-tendering based on expiry of bid validity, which was deliberately been left to expire, entails that the Appeals Authority is blessing the Respondent's negligence and misdeeds; and curtail the bidder's rights as well as defeating the purpose of the law.” (Ref. Appeal case no.08 of 2017-2018).

Finally, the PPAA delivered its decision and ordered the PE to sign the contract with the appellant. In their conclusion, the Appeals Authority ordered that: -

“.... The Appellant deserves to be awarded the tender since he is qualified in all aspects as per set criteria. The Appeals Authority invoking section 97(5) (e) orders the Respondent to award and sign the contract with the Appellant immediately.”

The order to sign a contract with the appellant issued by PPAA implies that the PE's practices during the evaluation of tenders involve unfair and unequal treatment of bidders contrary to the requirement of Sect.4A of the Act. Moreover, the act of refusing or neglecting to

implement the lawful order of the PPAA is gross mischief by the PE. There are needs to invoke stem measures against the PEs who behave unethically by disobeying the legal demands.

4.6.11 Procurement Audit Order

The order for relevant authority to conduct a procurement audit to the PE in appeal case No. 2 of 2016-17 was issued following the PE refusal or negligence to submit a statement of defense to the PPAA after the appeal being filed by the Contractor. Although the appeal was determined in the absence of the appellant and the respondent, the PPAA reviewed the documents submitted by the appellant and found a series of contraventions and non-compliances of the PPA and Regulation that: -

- (i) The PE issued a notice of intention to award the contract to the appellant without stating the reason for disqualification to the appellant contrary to the requirement of Sect.60(3) and Reg. 231. At the time, the PE issued a notice of intention to award while the contract has been entered into force.
- (ii) The PE did not respond to the application for administrative review applied by the respondent contrary to Sect. 96 of the Act and Reg.106.
- (iii) Upon being notified of the existence of the appeal at PPAA both through phone and e-mail, the PE promised to file the replies and submit the document requested. However, the PE did not submit a statement of defense rather a mere statement of reply, which was neither signed nor attested as required.
- (iv) Even after the PPAA issued notice to parties to attend the hearing as per Rule 18(2) of the GN, 411 of 2013, neither the appellant nor the PE appeared. None of them offered any reason for failure to do so.

The Appeals Authority finally dismissed the appeal for being filed out of time contrary to Sect.97 (2)(a) and order the relevant authority to conduct a procurement audit for the contract entered.: -

“the Appeals Authority dismisses the Appeal for being filed out of time and without leave to do so. Further, the Appeals Authority finds it appropriate to require relevant authorities to conduct procurement audit in respect of the said contract in which it has been reported that the Respondent refused to submit the relevant documents.”(Ref. appeal case No. 2 of 2016-17).

4.6.12 Undetermined Appeal and Withdrawal Order

Findings indicate that appeal case no. 36 of 2018-2019 was not determined after the PPAA upheld the two preliminary objections of the PE to the appeal. The first preliminary objection asserted that the appellant lacked locus standi in the appeal because he was not the tenderer who participated in the tendering process as required by Sect. 95, 96, and 97 of the Act read together with Reg.104 as well as Rule 5 of the PPAA Rules. The second preliminary objection of the PE is based on the fact that the PPAA lacked jurisdiction to entertain the appeal at hand because it has no powers to determine the issues relating to contractual obligations between the parties.

Likewise, the withdrawal order was prayed by the appellant in appeal case no19 of 2017-2018, before the start of hearing the appeal. The appellant informed that he had received a letter from the PE informing that the Appellant's tender would not be processed based on Dar es Salaam Regional Commissioner's directives. As a result, the appellant observed that the subject matter of the dispute was no more existence. Hence they prayed to withdraw the appeal. These findings further indicate that contractors' appeals are not only caused by PE's fault practices but also with other factors beyond their control. The researcher's opinion in this arena is that, whenever there is an appeal in public contract tendering possibilities of some political interests could be in as a catalyst.

4.6.13 Summary of findings on Specific Objective (ii)

The research questions on this specific objective are *“Which provisions of the PPA and Regulations are violated by PEs? Why and how these violations occur?”* Questions have answered by looking at various decisions and orders issued in favour of the appellants by the Appeals Authority to PEs. Analysis of the appellant's complaints and the counter-response from PE's reflected that; PE's practices in handling public procurement processes are coupled with violations of the provision and requirement of the PPA, 2011 and Regulations in the following areas: -

- (i) *During the evaluation of tenders.* This area is the most frequently stated by the Contractor's arguments in the appeals cases. The orders and decisions of the PPAA have confirmed that there are violations of Sect. 74 (1) of the PPA whereby PEs evaluate tenders in bias rather than on common basis. Furthermore, PEs violate Sect. 53(4) and Sect. 52 and Regulation 52 of the GN. No.446 /2013. This is evidenced by

the practices of PEs of evaluating tenders using criteria that are not explicitly stated in tender documents. Moreover, there are contraventions of Sect. 4A and Regulations 204 and 205. The provisions require PEs to evaluate tenders fairly and equally to get responsive tenders. The researcher believes that the fault tender evaluation has its root cause from the preparation of tender documents. PE's found to prepare and issue tender documents which are defective with unclear specifications and specific selection criteria contrary to the requirement of Section 70 of the Act and Regulation 184.

PE's violations of Sect. 41 of the Act also results in the fault tender evaluation process. PEs fail to observe the independence of powers and functions of the PMU, TB, and AO. Nevertheless, the unlawful formation of evaluation committees as a result of an illegal decision to award contract. Failure to sign personal covenants by the evaluation committees' members justify unethical conduct in handling the evaluation of tenders.

- (ii) *Capacity building of Local Contractors through the applicability of Exclusive Preference Schemes:* PE's are adamant to comply with Sect. 55 and 55D of the Act, together with Regulations 30 and 40 of the GN. No. 446/2013. PEs in appeal cases violated the cited provisions by refusing and or neglecting to apply the margin of preference to projects fall within the exclusive selection. The PE's behavior in this requirement is appeared to be intentionally or malicious set to impair competition between local contractors and foreign contractors. The findings from the appeal case acknowledge by indicating that the majority of appeals in this scenario are from local contractors. Local contractors appeal against PE's intention to award contracts reserved for local contractors to foreign contractors.
- (iii) *Decision making in handling procurement process:* Contradicting decision in issuing the notice of intention to award to contractors and reasons for disqualification of unsuccessful bidders are not left behind to be accelerators of appeals. The orders to re-evaluate tenders and or nullify the tender process by PPAA have mainly resulted from the violation of Sect.60 of the Act and Regulation 231. PEs, on the other hand, violates Sect.59 of the Act by deciding to reject all tenders without stating the reasons thereof, and or failure to communicate the reasons within a time limit.

Another important finding is that PE's intentionally refuse to implement lawful orders of the Appeals Authority. This aggressive behavior by PE shows that PE's act unlawful and they behave sic and coercive by infringing the principles objectives of public procurement. The explicit example in appeal case no. 26 of 2016-2017 and no.8 of 2017-2018 expose the unethical conduct of the PE's PMU, TB, and the AO on refusal to implement the orders and decisions of the PPAA. Although Rule no. 32 of the GN.411 of 2014 directs that after the expiry of 14 days since issuance of the PPAA decision, the appellant can file to execute the decree of an order issued by the Appeals Authority under the provisions of the Civil Procedure Code Cap. 33. The researcher's opinion is that the PPA should be amended to include the stem measures against PE's unethical conduct. The step may consist of additional penalties to the offences stipulated in Sect.104 of the Act.

4.7 Specific Objective (iii). Ways to Minimize the Contractor's Appeals in Public tenders

Findings from the first specific objective have established the practices which prompted contractors to lodge appeals against PEs and the arguments which support their appeals. On the other hand, the second specific objective indicated the provisions of the PPA and Regulations, which are violated by the PEs. The second research question used the decisions and orders issued by the PPAA to Contractors and PE's as the basis to test the validity of the contractor's appeals, and to determine the violated provisions of the PPA and Regulation. Nevertheless, the third specific objective is aiming at providing the proposal advice on measures that can be used by stakeholders in public procurement to minimize the Contractor's appeals.

The study revealed that contractors were prompted to appeal against PEs by various practices while handling public procurement processes. First, PE's lack of integrity, transparency, and accountability in handling tender evaluations from evaluation teams' formation to post-qualification of responsive bidders. Also, the use of discriminatory selection and disqualification criteria in tender documents and the use of defective and unapproved standard tender documents. Furthermore, Contractors appealed against the decision, act, and omissions of PE's AO and reviewing teams while determining the contractor's application for administrative review. Lastly, the refusal of AOs to make decisions within a time limit and alleged corrupt practices within PEs

The arguments supported the appeals assert that the tender evaluation processes are conducted contrary to the requirements of the Act and regulations. Besides, the decisions of the PEs in handling the procurement process and complaints contravenes the Act and Regulations. The PPAA upheld most of the Contractor's reasons for the appeals. They agreed with the appellants that tender documents preparation and evaluation processes were vitiated with irregularities. The most violated provisions are Sect.72, 74(1) of the Act, and Regulations 203 of GN.No.446/2013. On the other hand, the decisions of AOs and Reviewing Teams were covered with bias and contradictions. Not only that, the PEs violate Sect.55(1) and 55D of the Act, Regulations 34 and 151(4) of the PPR,2013 on building capacity to local contractors through exclusive preference schemes. The practices imply that PEs infringe on the principles of fairness, equality, and commercial competition. Additionally, the third research question is on “*What should be done to minimize the number of appeals in public tenders?*” the following fault areas of the procurement process should be revisited by PE’s: -

4.7.1 Preparation of Tender Documents

To minimize the appeals resulted from the use of unapproved standard tender documents, PE’s shall use solely STD, which are issued and authorized by PPRA. In case of any amendments to suit the PE’s needs, approval from PPRA and Attorney General’s chamber be obtained first. Furthermore, tender documents must be transparent and compliant with the requirements of Sect.70 and 72 of the Act and Regulations, 182,183, and 184 of the GN.No.446/2013 in terms of their contents, wording, and evaluation criteria to encourage fair competition. To avoid appeals resulted from the failure of the PEs to restrict tenders exclusively for local firms, PPRA shall prepare and issue authorized STD specifically for the procurement of works whose financial resources are provided solely by a Tanzanian public body.

4.7.2 Evaluation of Tenders

The findings indicated that the evaluation of tenders is conducted contrary to the requirements of Sect. 74 of the Act and Regulations 203, 204, and 205 as amended. The evaluation criteria used also are not explicitly stated in the tender documents. Apart from the above observations, the study also found that the evaluation of tenders is conducted in ignorance of the margin preference schemes where foreign contractors participate in national competitive bidding for tenders reserved for local contractors.

To minimize the appeal cases arising from these conduct, PE's should exercise a high level of integrity in appointing members of the evaluation committees; the same should be adhered to in the appointment of members of the TB. The independence of the functions and powers of the PMU, TB, and AO should comply.

4.7.3 Decision of PE's Accounting Officers in handling Procurement Proceedings

Decisions of the PE's AOs shall be issued based on the recommendations of the PMU, the Reviewing team, and TB. Decisions such as those related to the rejection of all tenders under Sect. 59 of the Act, acceptance of tender and entry into force of a procurement contract according to the Sect.60 of the Act, and or settlement of complaints or disputes raised by bidders shall be following the needs of the PPA and Regulations.

Decisions of the PE's shall address all matters raised in handling administrative review, and they shall be consistent with the requirements of the PPA. Furthermore, they should be issued within time limit, which is within Seven working days in case of handling contractor's application for administrative review by AO as required by Sect. 60 and Sect. 96, and no complaint should be left undetermined by the AO.

4.7.4 Compliance to Orders and Directives issued by Appeals Authorities

The study also found that some appeals result from PE's negligent and malicious actions of refusing to implement lawful orders and decisions issued by competent authorities. At this point, Sect.104 of the Act is to be revisited so that any officer of the PE who commits an offence, and on conviction should be heavily punished. Furthermore, Sect. 97 (5) shall be reviewed to include issuing a direct order to punish specific officers of the PE's who commits offence. The competent Authorities such as PCCB, CAG, and PPRA should conduct frequent audits and follow-ups to the PE's to ensure that the PPAA directives and orders are implemented effectively. Not only to PE's also to the appellants who cause unnecessary appeals, which in turn delays the procurement process.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The purpose of this study was to analyze the public procurement appeal cases to understand practices by PE's that have led to appealed tender awards from contractors. The main research questions are, "*What are the PE's practices which led to appeals by Contractors and which provisions of the PPA violated?*" Specific issues that have been addressed by this study include the nature, characteristics, bases, and arguments of the contractor's appeals and the violated provisions of the Act and Regulations. This study reviewed 59 appeal cases against four categories of PE's who were involved in public procurement of works between the years 2014-2020. The PE's are the Government Executive Agencies and Public Authorities, Parastatal Organizations, Ministries, and LGA's. This chapter concludes the study on the Procuring Entities' Practice in Awarding Public Construction Contracts; An Exposition from Contractors' Appeals in Tanzania. The chapter also presents the recommendations based on the issues arising from this study and the areas for further studies.

5.2 Conclusions

The contractor's arguments in the appeals are centered on the central three parts of the public procurement process. These are the preparation and issuing of tender documents, evaluation of tenders, and decision-making of the AO's in handling the procurement process.

At the preparation of tender documents: The Study has indicated that PE's contravene the requirements of Sect.70 of the Act and Regulation 184 by issuing inappropriate tender documents whose contents and selection criteria do not encourage fair competition among bidders as a result of complaints. PE's also use unapproved standard tender documents, which are not issued and authorized by PPRA and contrary to the requirement of Regulation 184 (4). Furthermore, the study found that even when the standard tender documents are used, PE's introduce changes in the Tender Data Sheet by including discriminatory selection criteria, especially in the qualification criteria and applicability of exclusive preference schemes where required.

The study suggests that to minimize the appeals resulted from these faults, PEs shall use appropriate standard tender documents that conform to the requirement of the Act and Regulations in terms of their contents, wording, and evaluation criteria. The same STD shall

be those which are issued and authorized by PPRA. In case of any amendment to suit the PE's procurement needs, changes introduced shall be communicated and approved by PPRA and AG's Chamber. The study further suggests that there is a need for PPRA to prepare and issue STD, which should be used on restricted tenders for domestic preference is required.

The evaluation process of tenders. The evaluation of tenders is conducted in three major stages: the preliminary evaluation stage, the detailed evaluation stage, and the post-qualification stage. The findings of this study regarding unfair and unequal treatment of bidders during the evaluation of tenders are consistent with those of previous research (Ameyaw, Mensah, and Osei-Tutu, 2012; Patras, 2016; NAOT, 2015; and PPRA, 2019). Some of the appellants submitted that they were not satisfied with how their bids are treated during the evaluation process. Contractors feel that the evaluation is conducted in bias, using criteria that are not explicitly stated in the tender documents, errors in arithmetic checking, and failure to grant a margin of preferences up to 10% where required. Other appellants presented that the tender evaluation processes are vitiated with irregularities. The study suggests that to overcome the appeals resulted from these reasons. The PE's evaluation teams, members of the PMU, and AO's shall handle the tender evaluation process with a high level of integrity and accountability. Moreover, there is a need to review and change the procedures of appointing tender evaluation committees.

The decision of PE's AO in handling the public procurement process: This study revealed two exciting concerns in connection to the decision of the AO of the PE's while handling the public procurement process. First, during handling contractor's application for administrative review. Sect. 96 (6) of the PPA and Regulation 106 require the AO to deliver a written decision within 7 working days; the decision shall state the reasons for their decision and if the complaint is upheld in whole or in part, indicating the corrective measures to be undertaken if the complaint is upheld. The findings of the study showed that some PE refuse to deliver decisions within the time limit and other issue contradicting and bad decisions on the matters under complaint.

The second concern was the decisions of the AO in handling the evaluation tender process. The PPA in Sect. 41 requires that functions and powers the AO, TB, User departments, PMU, and the evaluation committee to be independent. This study has indicated that the same provision has not complied as some of AO's interfered with the functions of TB, Evaluation

Committees, and PMU. As a result, the evaluation of tenders was not conducted in accordance with the requirements of the Act, and subsequently, tenders are awarded to unqualified bidders. The findings, however, are in contrast with the previous research by (Malinganya, 2015) who identified that there is always independence of functions and powers between AOs, TB, and PMU.

Compliance to Orders and Directives issued by Appeals Authorities: One of the prominent findings of this study indicate that some PE's refuse or neglect to implement the orders and directives of the PPAA for the matter appealed before it. The impact of these negligent acts is the re-appeals of tenders, delays in procurement processes, and unnecessary costs to the appellants. The study suggests intense punishment for Accounting Officers of the PEs.

5.3 Recommendations

Based on the findings of this study, recommendations are made concerning ways of minimizing the number of appeal cases in future tenders. The study concluded that most identified arguments of contractor's appeals in public procurement of works are found in the following three areas of the procurement process. First, during preparation and issuing of tender documents, second, during the evaluation of tenders, and or during issuing decisions on the contractor's application for administrative review.

PE's are found to use inappropriate and unapproved STD. On the other hand, they customize the mandatory clauses in the BDS to include selection criteria that discriminate against other contractors. Nevertheless, they prepare and issue technical specifications in the tender documents which are not clear to enable contractors to prepare competitive bids. To minimize appeals caused by the above faults, the study recommends a thorough review of the STD issued by PPRA to identify any inefficient, which render PE to customize unnecessarily. PE's shall prepare clear and precise technical specifications to enable tenderers to prepare competitive bids.

Moreover, the study identified that tender evaluations are conducted contrary to the requirements of the Act and Regulations in both stages (i.e, preliminary, detailed, and post qualification stages). To minimize appeals, arise from these malpractices, the study recommends that PMU, TB, Evaluation Committees, and User departments of the PE's shall abide by the requirement of Sect. 41 of the Act by acting independently to their functions

and powers while handling public procurement proceedings. They should evaluate tenders with a high level of integrity, transparency, and accountable manner. There is a need to review and look for possibility to change the procedure for appointing members of evaluation committees within PEs.

Additionally, the study found that the decisions of the AO's and reviewing teams in handling the Contractor's application for administrative review are issued contrary to the requirement of the Act and regulations. The decisions issued are either unsatisfactory, contradicting, ultra-vires, or out of time limit. The study further found that PE's refuse or neglect to implement the orders and directives issued by PPAA to the appealed tender awards. The study recommends that a review of Sect. 104 of the Act on the offences to include heavy penalties to AOs who are convicted of issuing negligent decisions, which results in loss of public funds.

5.4 Areas for further study

The researcher proposes further study in the following areas.

- (a) The study indicated that the Evaluation of tenders by PE's are not conducted in accordance with the provisions of the PPA and Regulation. Further research needs to examine the effectiveness of PE's Evaluation Committees in handling tender evaluations in public procurement.
- (b) The study also has indicated that PE's refuse to implement the orders and directives of the PPAA. One can survey to determine the extent of compliance with the orders and directions of the PPAA by PEs.

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APPENDICES

Appendix I: PPAA form No. 01 Statement of Appeal

PPAA FORM NO. 1

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT

In the matter of appeal

APPEAL NO.....OF

BETWEEN

.....**APPELLANT**

AND

.....**RESPONDENT**

STATEMENT OF APPEAL

(Under Rule 9, 10)

1. PARTICULARS OF THE APPELLANT

- a) Name:.....
- b) Nature of business
- c) Postal address
- d) City, Municipality, Town
- e) Telephone No.....
- f) Fax No. E-mail address
- g) Tender No.for
.....(type of tender).

2. STATEMENT OF FACTS SUPPORTING THE APPEAL:

(If space provided is not adequate, attach as many additional pages as needed for the statements):

(a) Date of the tender advertisement/invitation.....

(b) Date of the tender opening (if applicable)

3. Grounds/ reasons for the appeal:

.....

4 LIST OF DOCUMENTS OR ITEMS TO BE PRODUCED BEFORE THE APPEALS AUTHORITY

(Give brief description of each document or Items attached to the Statement of Appeal and number them accordingly:

Appendix No.	Subject	Date	Source/Author

5. REMEDIES/RELIEFS/CLAIMS: (number them consecutively)

- i.
- ii.
- iii.
- iv.
- v.

6. PARTICULARS OF WITNESS

Name	Designation	Address

Dated this.....day of 20

Name.....

Designation.....

Signedby (the Appellant/Legally Authorized representative).

FOR OFFICIAL USE ONLY:

(Received by PPAA on theday of.....20.....at(am/pm)

Name:.....Designation.....

Signature.....Official stamp.....

7. Statement of Appeal served upon:

Name:

Address:

Date:

Signature:.....

Designation:..... Official stamp

.....

Appendix II: PPAA form No.2 Statement of Reply

PPAA FORM NO. 2

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY



AT

In the matter of

APPEAL NO.....OF

BETWEEN

.....APPELLANT

AND

..... RESPONDENT

STATEMENT OF REPLY

(Under Rule 12(2))

1. PARTICULARS OF THE RESPONDENT

(a) Name:

(b) Nature of business

(c) Postal address

(d) City, Municipality, Town

Telephone No.

Fax No. E-mail address

(e) Tender No..... for(type of tender)

(f) Procurement method used.....

2. REPLIES TO THE APPELLANT'S STATEMENT OF APPEAL:

(a) Date of the tender advertisement/invitation.....

(b) Date of the tender opening (if applicable)

(c) Evaluation was carried from (dd/mm/yy) to (dd/mm/yy).....

(d) Date of award by the Tender Board

(e) Date of notification of award

(f) Date of contract signing.....

3. RESPONSE TO THE GROUNDS OF APPEAL:

(If space provided is not adequate, attach as many additional pages as needed for the statements. Ensure you address each of the grounds of appeal in the same order as presented by the Appellant)

.....

4. LIST OF DOCUMENTS OR ITEMS TO BE PRODUCED BEFORE THE APPEALS AUTHORITY

(Give brief description of each document or Items attached to the Statement of Reply and number them accordingly:

Appendix No.	Subject	Date	Source/Author

5. REPLIES TO THE REMEDIES CLAIMED

- i.
- ii.
- iii.
- iv.

6. PARTICULARS OF WITNESSES

Name	Designation	Address

Dated thisday of20.....

Name..... Designation.....

Signedby (the Respondent/Legally Authorized representative).

FOR OFFICIAL USE ONLY:

Received by PPAA on theday of20.....at.....(am/pm)

Name:Designation.....

Signature..... Official stamp.....

7. SERVICE OF COPY OF THE STATEMENT OF REPLY

Name:

Address:

Date:

Signature:

Designation:

Official stamp

**Appendix III: Extract of the violated provisions of the PPA,211 and Regulations
GN.NO.446/2013**

No. 7 *Public Procurement* *2011*

- (ii) majority of the paid up share capital of the individual companies are held by citizens of Tanzania;
 - (iii) the joint venture itself is registered in Tanzania;
 - (iv) do not have arrangement whereby any major part of the net profits will accrue or be paid to persons who are not citizens of Tanzania or to companies which would not be eligible under this section;
- (c) for partners or individual persons trading as contractors or consultants the majority are held by citizens of Tanzania.

(4) For all procurement under international and national competitive tendering, incentives set out in the Regulations made under this Act, shall be used to encourage foreign firms to team up with Tanzanian tenderers in the form of joint venture or subcontracting arrangements in the tender process and in the execution of the contract.

Exclusive
preferenc
e to local
persons or
firms

55.-(1) Where financial resources are exclusively provided by a Tanzanian public body, each procurement of works, goods or services that has a value not exceeding a threshold specified in the Regulations shall be reserved exclusively for local persons or firms.

(2) Where the procuring entity does not proceed with the local person or firm set-aside under subsection (1), and procures on unrestricted basis, the procuring entity shall include in the procurement file the reason or reasons for the unrestricted procurement.

Preference to local goods

55C. In contracts for goods and related services to be awarded on the basis of international competitive tendering or national competitive tendering, procuring entities shall grant a margin of preference of up to fifteen percent to domestically manufactured or produced goods and related services as prescribed in the Regulations.

Capacity building of local firms

55D.-(1) A procuring entity shall, after consultation with relevant statutory bodies, set aside contracts to be used for the purpose of capacity building of local firms.

(2) Where individual firms lack the capacity to execute the contracts, the firms may form joint ventures with a view to enhancing their capacity.

(3) The Minister may make Regulations prescribing procedures for capacity building of local firms under this section."

55E. Notwithstanding any other provision to the contrary, local firm under section 55A, 55B, 55C and 55B shall have a share capital which is wholly owned by citizens of the United Republic"

Amendment of section 59

17. The principal Act is amended in section 59 by deleting subsection (6).

(4) The Authority shall issue guidelines, to be updated from time to time, on the minimum values and modalities for provision of tender security and other forms of guarantees or bonds.

Rejection
of tenders
or
proposals

59.-(1) Tender documents and request for proposals may provide that procuring entities reject all tenders or all proposals.

(2) The rejection of all tenders or all proposals under this section shall be justified where-

- (a) there is lack of effective competition;
- (b) tenders or proposals are not substantially responsive to the tender documents or to the request for proposals;
- (c) the economic or technical data of the project have been altered;
- (d) tenders or proposals involve costs substantially higher than the original budget or estimates;
- (e) exceptional circumstances render normal performance of the contract impossible;
- (f) tenders received contain serious irregularities resulting in interference with the normal play of market forces; or
- (g) funds voted or earmarked for the procurement have not been withheld, suspended or have otherwise not been made available.

(3) The lack of competition shall not be determined solely on the basis of the number of tenderers or persons who made proposals, and where all tenders or proposals are rejected, the procuring entity shall review the causes justifying the rejection and shall consider -

- (a) making revision to the conditions of contract, design and specifications, scope of the contract, or a combination of these before inviting new tenders; or

- (b) revising the request for proposals (including the short list) and the budget.

(4) Where the rejection of all tenders or all proposals is due to lack of competition, wider advertising shall be considered and where the rejection is due to most of the tenders or proposals being non-responsive, new tenders or new proposals may be invited from the initially pre-qualified firms, or with the prior agreement of the appropriate tender board, from only those who submitted tenders or proposals in the first instance.

(5) The appropriate tender board's prior approval shall be sought before rejecting all tenders or all proposals, soliciting new tenders or proposals or entering into negotiations with the lowest evaluated tenderer.

(6) Subject to the provisions of subsection (5) the accounting officer shall seek approval from the Authority prior to rejecting tenders or proposals.

Acceptance of tender and entry into force of a procurement contract

60.-(1) Subject to the provisions of section 59, the tender or proposal that has been ascertained to be the successful tender or proposal pursuant to the provision of this Act shall be accepted.

(2) The accounting officer shall be notified by the tender board of its award decision within three working days of making the decision.

(3) Upon receipt of notification, the accounting officer shall, immediately thereafter issue a notice of intention to award the contract to all tenderers who participated in the tender in question giving them fourteen days within which to submit complaints thereof, if any.

(2) The approved tender notice shall be advertised by the procuring entity as set out in the Regulations made under this Act and shall ensure widest reach of potential tenderers.

(3) Any tender notice shall be published in sufficient time, as prescribed in the Regulations, to enable prospective tenderers to obtain tender documents and prepare and submit their responses before the deadline for receipt of tenders.

(4) The time specified for the opening of the tenders submitted shall be the same as the deadline for receipt of tenders or immediately thereafter, and be repeated, together with the place for tender opening, in the invitation to tender.

(5) Subject to subsection (4) the procuring entity may prior to the deadline for submission of tenders, modify the tender documents and extend the deadline for submission of tenders if deemed necessary.

Issue of
tender
documents

69.-(1) The procuring entity shall provide tender documents immediately after first publication of the tender notice to all suppliers or contractors who respond to the tender notice and pay the requisite fee, if required, for which a receipt shall be given.

(2) All prospective tenderers shall be provided with the same information, and be assured of equal opportunities to obtain additional information.

(3) Tender documents shall not include requirements and terminologies which discriminate unfairly against participation by tenderers.

(4) Subsection (3) may be deviated where circumstances demand provided that, any deviation is made on basis of provisions of the Regulations made under this Act.

(5) The scale of fees payable for tender documents shall be as set out in the Regulations made under this Act.

Content
of tender
document

70.-(1) The procuring entity shall use the appropriate standard model tender documents specified in the Regulations for the procurement in question.

(3) All tenders submitted before the deadline time and date for submission shall be opened in public, in the presence of the tenderers or their representatives and other parties with a legitimate interest in the tender proceedings and the tender opening shall take place at, or immediately after the deadline time and date given in the tender documents for the receipt of the tenders and the names of all those present at the tender opening and the organisations they represent shall be recorded by the Secretary of the respective tender board.

(4) The names and addresses of each tender the total amount of each tender or and of any alternative tenders, if they have been requested or permitted, shall be read and recorded during the tender opening.

(5) Subject to the provisions of section 60(3), after the public opening of tenders, information relating to e-examination, clarification and evaluation of tenders and the recommendations concerning awards shall not be disclosed to tenderers or other persons not officially concerned with the process until the notice of intention to award a contract is notified to the tenderer who participated in the tender process.

(6) Information referred to in subsection (5) shall be made available to the Authority, the Appeals Authority, accounting officer and to the Minister when that information is so required.

Evaluation
and
comparison
of tenders

74.-(1) The evaluation committee shall evaluate on a common basis tenders that have not been rejected in order to determine the cost to the procuring entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs, but the lowest submitted price, may not necessarily be the basis for selection for award of a contract.

(c) in the case of services, a refusal by the procuring entity to respond to an expression of interest in participating in request for proposals proceedings.

(3) Any tenderer who is aggrieved by the decision of the accounting officer under subsection (2) shall have the right to lodge a complaint to the Authority.

Settlement of complaints or disputes by accounting officer

96-(1) Any complaints or dispute between procuring entities and tenderers which arise in respect of procurement proceedings, disposal of public assets by tender and awards of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reasons for his decision.

(2) On receiving a complaint under this section the accounting officer may, depending on the nature of the complaint, constitute an independent review panel from within or outside his organization which shall review the complaint and advise him on the appropriate actions to be taken.

(3) Where after proper investigation, it is established that, the Chairman of the tender board, any member of the tender board, the secretary of the tender board or any other public officer of the procuring entity has violated this Act and the regulations made under it, the accounting officer shall take appropriate actions against him.

(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within twenty eighty days from the date the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or when that tenderer should have become aware of those circumstances, whichever is earlier.

(5) The accounting officer shall not entertain a complaint or dispute or continue to entertain a complaint or dispute after the procurement contract has entered into force.

(3) The decision of the accounting officer, the Authority or the Appeals Authority shall be furnished within seven days after the delivery of the decision to the tenderer who submitted the complaint or dispute to the procuring entity and to any other tenderer or Government authority who participated in the review proceedings and after the decision has been delivered, shall be made available for inspection by the general public, provided no information shall be disclosed if its disclosure –

- (a) is contrary to law;
- (b) impedes law enforcement;
- (c) is not in the public interest;
- (d) prejudices legitimate commercial interest of parties; or
- (e) inhibits fair competition.

(4) The Authority may, upon receipt of reports of findings from the accounting officer or decision of the Appeals Authority, recommend to the competent authority to take disciplinary measures against the concerned person or body implicated in the report or decision, as the case may be, in accordance with the provisions of this Act.

Suspension of
procurement
proceedings

100.-(1) Upon receipt of a complaint or dispute, the accounting officer shall subject to subsection (2), suspend the procurement process pending determination of a complaint or an appeal.

(2) The suspension referred to in subsection (1) shall not apply where the procuring entity certifies to the Authority that urgent public interest considerations require the procurement to proceed and the certification shall state the grounds for the findings which shall be conclusive with respect to all levels of review other than judicial review.

- (e) causes loss of public properties or funds as a result of negligence in the implementation of this Act,

commits an offence and on conviction shall be liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than seven years or to both, and in addition to the penalty imposed in this section, the court shall order that the amount of loss incurred by the complainant be compensated, failure of which, the court shall issue an order of confiscation of personal property of the person convicted in order to recover the loss.

(2) A person who -

- (a) without reasonable excuse fails or refuses to give information, produce any document, records or reports required under section 18 or under the notice issued in accordance with subsection (3) of section 92;
- (b) without reasonable excuse, fails or refuses to give information, produce any document, records or reports required under subsection (2) of section 18 or under the notice issued in accordance with subsection (4) of section 97;
- (c) delay without justifiable cause, the opening or evaluation of or the awarding of contract beyond the prescribed period; or
- (d) contravenes or fails to comply with provisions of this Act, or regulations made under this Act,

commits an offence and on conviction is liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding three years or to both.

(3) Where a procuring entity consistently contravenes this Act, it shall, on the direction of the Authority, have its procurement function transferred to the Agency until the Authority is satisfied that the causes of the contravention have been rectified.

PART X
GENERAL PROVISIONS

Codes of
Conduct

102.-(1) Public officers and experts engaged to deliver specific services under this Act shall subscribe to the Code of Ethical Conduct.

(2) All tenderers shall be required to sign a declaration of compliance with those Codes of Ethical Conduct determined by the Authority from time to time.

Protection
from
personal
liability

103. No act or thing done by any member or by any employee of the Authority or Appeals Authority shall, if done or omitted bona fide in the execution or purported execution of his duties as a member or as an employee of the Authority or Appeals Authority, subject him to any action, liability or demand of any kind.

Offences

104.-(1) A person who-

- (a) knowingly gives false or misleading information or evidence in purported compliance with a summons issued under this Act;
- (b) contrary to this Act, interferes with or exerts undue influence on any officer or employee of the Authority, Appeals Authority or procuring entity or member of tender board in the performance of his functions or in the exercise of his her power under this Act;
- (c) open any sealed tender, including such tenders as may be submitted through electronic system and any document required to be sealed, or divulge their contents prior to the appointed time for the public opening of the tender documents;
- (d) connives or colludes to commit a fraudulent, corrupt, collusive, coercive or obstructive act as defined in section 3;

*Public Procurement**GN. No. 446 (contd.)*

part or rejected;

(b) the reasons for the decision; and

(c) any corrective measures to be taken;

(8) The accounting officer shall submit a copy of the decision to the Authority within seven days from the date of its delivery.

(9) Where the accounting officer does not issue a decision within the time specified in sub-regulation (6), the tenderer submitting the complaint or dispute shall within fourteen days after such specified time, institute proceedings under section 97 of the Act, and upon instituting such proceedings, the competence of the accounting officer to entertain the complaint or dispute shall cease.

(10) Where the complainant is not satisfied with the decision of the accounting officer or, where the accounting officer does not issue a decision within the specified time, the complainant shall submit his complaint to the Appeals Authority within fourteen days from the date of communication of the decision by the accounting officer.

Review by
the Appeals
Authority

107.-(1) Complaints or disputes which-

(a) are not settled within the specified period under regulation 106(6);

(b) are not amicably settled by the accounting officer; or

(c) arise after the procurement contract has entered into force pursuant to section 60(11) of the Act,

shall be referred to the Appeals Authority within fourteen days from the date when the tenderer received the decision of the accounting officer or, in case no decision is issued after the expiry of the time stipulated under regulation 106 (6) or when the tender become aware or ought to have become aware of the circumstances giving rise to the complaint or dispute pursuant to section 97 (3) of the Act.

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with section 95 of the Act.

Submission
of
applications
for review to
the
Accounting
Officer

105.-(1) Any application for administrative review shall be submitted in writing or electronically to the accounting officer of a procuring entity and a copy shall be served to the Authority within twenty eight days of the tenderer becoming or should have become aware of the circumstances giving rise to the complaint or dispute.

(2) The requirements of sub-regulation (1) shall not apply to complaints submitted in response to the notice of intention to award the contract issued to tenderers pursuant to section 60(3) of the Act.

(3) The application for administrative review shall contain-

- (a) details of the procurement or disposal requirements to which the complaint relates;
- (b) details of the provisions of the Act, Regulations or provisions that have been breached or omitted;
- (c) an explanation of how the provisions of the Act, Regulations or provisions have been breached or omitted, including the dates and name of the responsible public officer, where known;
- (d) documentary or other evidence supporting the complaint where available;
- (e) remedies sought; and
- (f) any other information relevant to the complaint.

(4) The accounting officer of a procuring entity shall not entertain a complaint or dispute or continue to do so after the procurement or disposal contract has entered into force.

Administrative
review by
accounting
officer-

106.-(1) An accounting officer shall, upon receipt of an application for administrative review-

- (a) suspend the procurement or disposal

Public Procurement

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proceedings of the tender in dispute, until he delivers a written decision on the complaint; and

- (b) notify all tenderers who participated in the tender, of the complaint and of its substance within three working days of receipt of such application and the tenderers who opt to join in the proceeding shall submit written responses within three working days of receipt of such notification.

(2) Sub-regulation (1) (a) shall not apply where certification has been provided by the procuring entity and accepted by the Authority pursuant to section 100(2) of the Act.

(3) Upon receiving an application for review, an accounting officer shall institute an investigation to consider-

- (a) the information and evidence contained in the application;
- (b) the information in the records kept by a procuring entity;
- (c) the information provided by other tenderers; and
- (d) any other relevant information.

(4) The investigation instituted in accordance with sub-regulation (3) may be conducted by a review panel appointed in accordance with section 96(2) of the Act.

(5) In appointing members of a review panel pursuant to sub-regulation (4), the accounting officer shall consider their expertise and experience on the subject matter of the tender.

(6) An accounting officer shall, within fourteen days after receipt of the complaint or dispute, deliver a written decision to a complainant and other tenderers who participated in the proceedings.

(7) The decision of accounting officer shall address fully the tenderer's grounds of complaints and shall indicate-

- (a) whether the application is upheld in whole, in

Amended to include 7 working Days

Public Procurement

GN. No. 446 (cont.)

a common basis opened tenders in order to determine the cost or price to the procuring entity of each tender in a manner that permits a comparison to be made between the tenders on the basis of the evaluated costs or prices.

(4) Prior to the detailed evaluation of tenders, the tender evaluation committee shall carry out a preliminary examination of the tenders to determine whether or not-

- (a) each tender is substantially responsive to the requirements of the tender documents;
- (b) the required securities have been provided;
- (c) the documents have been properly signed; and
- (d) the tenders are otherwise generally in order.

(5) For the purpose of this regulation, a tender is considered to be substantially responsive if it conforms to all the terms, conditions and specifications of the tender document without material deviation or reservations.

Examination,
evaluation
and
comparison
of tenders

203.-(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.

(2) Tenders shall be comparable among themselves in order to determine the lowest evaluated cost for procurement of goods, works or services or the highest evaluated price for revenue collection.

Checking of
substantial
responsiveness
to
commercial
terms and
conditions

204.-(1) All tenders shall be checked for substantial responsiveness to the commercial terms and conditions of the tendering documents.

(2) Material deviations to commercial terms and conditions, which justify rejection of a tender shall include the following:

- (a) failure to sign the bid form and price schedules by the authorized person or persons;
- (b) failure to satisfy eligibility requirements;
- (c) failure to submit a tender security as specified in the tendering documents;

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NINETH SCHEDULE

(Made under regulations 3, 27, 34, 37, 38, 39 and 40)

PREFERENCE SCHEME FOR LOCAL SUPPLIERS, CONTRACTORS AND SERVICE PROVIDERS

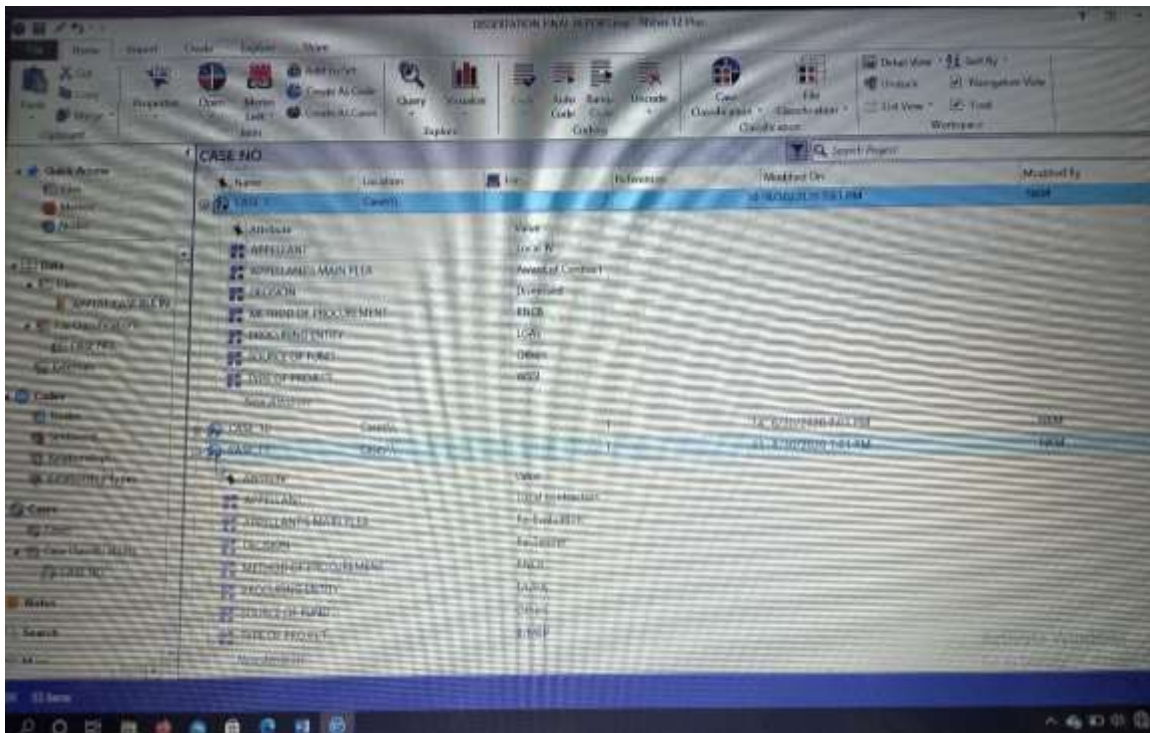
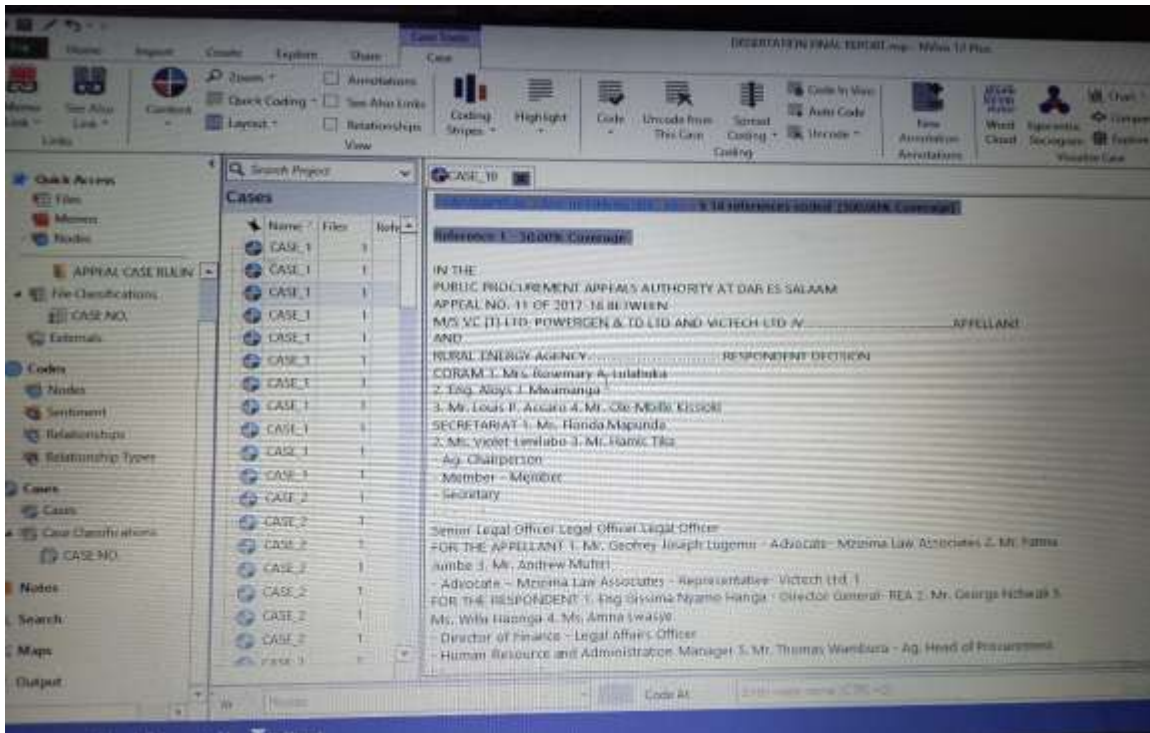
A: Margin of Preference in favour of local contractors or service providers, or association between local and foreign contractors or service providers under national and international competitive tendering.		
(a)	Margin of Preference under National and International competitive tendering for local contractors or service providers.	Margin of preference shall be 10%
(b)	Margin of Preference under National and International competitive tendering or selection for association of local and foreign contractors or service providers.	
Input of foreign contractors or service providers, in the association either in the form of joint venture or subcontracting arrangements.	50-70%	Margin of preference shall be 6%
	25 -49%	Margin of preference shall be 8%
	0 -24%	Margin of preference shall be 10%

The Authority shall in consultation with various industry stakeholders prepare guidelines to determine the level of input of foreign contractors or service providers in the association, and as part of the registration for eligibility to the preference scheme shall determine the margin of preference which shall be granted to a particular association between local and foreign contractors or service providers.

- B: Margin of Preference for goods mined or manufactured in Tanzania shall be 15%.
- C: Exclusive Preference to local suppliers, contractors or service providers shall be applicable to tenders whose values are shown below:

Procurement type	Value (Tshs)
Works	10,000,000,000
Goods	2,000,000,000
Non-Consultant Services	2,000,000,000

Appendix IV Some NVIVO 12 PLUS Software Snapshots



The screenshot displays a software interface with a table titled "Nodes". The table contains the following data:

Name	Type	Reference	Location	Marked On	Marked By
1	21	11-20-2020 10:44 AM	MM	11-20-2020 11:01 AM	MM
2	18	11-20-2020 10:47 AM	MM	11-20-2020 11:01 AM	MM
3	15	11-20-2020 10:48 AM	MM	11-20-2020 11:01 AM	MM
4	1	11-20-2020 10:48 AM	MM	11-20-2020 11:01 AM	MM
5	10	11-20-2020 10:50 AM	MM	11-20-2020 11:01 AM	MM
6	4	11-20-2020 10:50 AM	MM	11-20-2020 11:01 AM	MM
7	38	11-20-2020 10:51 AM	MM	11-20-2020 11:01 AM	MM
8	5	11-20-2020 10:51 AM	MM	11-20-2020 11:01 AM	MM
9	14	11-20-2020 10:52 AM	MM	11-20-2020 11:01 AM	MM
10	15	11-20-2020 10:52 AM	MM	11-20-2020 11:01 AM	MM
11	17	11-20-2020 10:54 AM	MM	11-20-2020 11:01 AM	MM
12	10	11-20-2020 10:54 AM	MM	11-20-2020 11:01 AM	MM

The screenshot displays a software interface with a table titled "CASE NO.". The table contains the following data:

Name	Location	Date	Reference	Marked On	Marked By
1	1	11-20-2020	11-20-2020 11:01 AM	MM	
2	1	11-20-2020	11-20-2020 11:01 AM	MM	

Name	Copies	References	Modified On	Modified By	Description
CASE 2	10	8	18/07/2015 3:44 PM	SARA	
CASE 2	8	8	18/07/2015 3:43 PM	SANDY	
CASE 1	11	9	18/07/2015 3:43 PM	SANDY	
CASE 2	11	9	18/07/2015 3:43 PM	SANDY	
CASE 3	9	8	18/07/2015 3:41 PM	SANDY	
CASE 2	9	8	18/07/2015 3:40 PM	SANDY	
CASE 2	9	8	18/07/2015 3:40 PM	SANDY	
CASE 2	9	8	18/07/2015 3:40 PM	SANDY	
CASE 2	14	10	18/07/2015 3:39 PM	SANDY	
CASE 2	8	8	18/07/2015 3:38 PM	SANDY	
CASE 1	12	10	18/07/2015 3:47 PM	SANDY	
CASE 2	9	8	18/07/2015 3:38 PM	SANDY	
CASE 2	11	10	18/07/2015 3:37 PM	SANDY	
CASE 2	14	10	18/07/2015 3:42 PM	SANDY	
CASE 1	9	8	18/07/2015 3:37 PM	SANDY	
CASE 2	11	10	18/07/2015 3:36 PM	SANDY	
CASE 2	11	10	18/07/2015 3:36 PM	SANDY	
CASE 2	11	10	18/07/2015 3:36 PM	SANDY	
CASE 2	11	10	18/07/2015 3:36 PM	SANDY	
CASE 2	11	10	18/07/2015 3:36 PM	SANDY	
CASE 2	11	10	18/07/2015 3:36 PM	SANDY	
CASE 2	11	10	18/07/2015 3:36 PM	SANDY	
CASE 2	11	10	18/07/2015 3:36 PM	SANDY	

