

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 07 OF 2025 - 2026

BETWEEN

M/S NATIVE PROFESSIONALS COMPANY LTD.....APPELLANT

AND

TANZANIA RURAL AND URBAN ROADS AGENCY

(TARURA - TANGA REGIONAL OFFICE).....RESPONDENT

DECISION

CORAM

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

SECRETARIAT

- | | |
|-------------------------|---------------------------|
| 1. Ms. Florida Mapunda | - PALS Manager |
| 2. Ms. Agnes Sayi | - Principal Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPELLANT

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| 1. Mr. Gasper Dickson | - Managing Director |
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FOR THE RESPONDENT

- | | |
|-------------------------|------------------------------------|
| 1. Mr. Boaz Msoffe | - State Attorney, OSG |
| 2. Mr. Mundhir Mrindoko | - Senior State Attorney,
TARURA |



3. Mr. Michael Ruhara

- Procurement Supplies
Officer, TARURA

4. Mr. Richard Gama

- Civil Engineer, TARURA

This appeal has been lodged by M/S Native Professionals Company Limited (hereinafter referred to as "**the appellant**") against the Tanzania Rural and Urban Roads Agency (TARURA - Tanga Region) (hereinafter referred to as "**the respondent**"). It is in regard to Tender No. S10/026/2025/2026/W/49 for the Upgrading to Gravel Standard for Kwenjugo - Mbagwi Road (8.0 km), Mandera - Kwendinguzu - Masampata Road (5.0 km), Chanika - Mapinduzi - Kilimilangombe Road (5.0 km), and Construction of Box Culvert Structures along Mandera - Kwendinguzu - Masampata Road, Chanika - Mapinduzi - Kilimilangombe Road and Magarimabovu - Antakae - Kobil Road at Handeni Town (hereinafter referred to as "**the tender**").

Based on the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**"), the background of this appeal can be summarized as follows: -

The tender was done in accordance with the National Competitive Tendering method as specified in the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as "**the Regulations**").

On 14th July 2025, the respondent invited eligible tenderers to participate in the tender through the National e-Procurement System of Tanzania



(NeST). By the submission deadline, seven tenders, including that of the appellant, were received by the respondent. After evaluation, the Evaluation Committee recommended awarding the tender to M/S J.P. Traders Limited (**the Proposed awardee**) for a contract price of Tanzania shillings Five Hundred Fifty – Nine Million One Hundred Fifty Thousand (TZS 559,150,000.00/=) (VAT exclusive) for a completion period of 180 days.

On 7th August 2025, the respondent issued a Notice of Intention to award informing the appellant of its intention to award the contract to the proposed awardee. The Notice stated that the appellant's tender was not considered for award due to the submission of an outdated bank statement, which was issued before the tender was advertised. Consequently, the appellant failed to demonstrate sufficient access to financial resources to meet liabilities of current and future contracts.

Dissatisfied with the reason for its disqualification, the appellant applied for administrative review to the respondent on 15th August 2025. On the same date, the respondent issued a decision rejecting the Appellant's complaint. Further aggrieved, the appellant submitted this appeal to the Appeals Authority on 25th August 2025.

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

- 1.0. **Whether the disqualification of the Appellant's tender was justified;** and
- 2.0. **What reliefs, if any, are the parties entitled to?**



SUBMISSIONS BY THE APPELLANT

The appellant's submissions were presented by Mr. Gasper Dickson, Managing Director. He commenced on the first issue by asserting that the appellant was one of the tenderers that participated in the tender process. On 7th August 2025, the appellant received a Notice of intention to Award indicating that its tender was disqualified due to submission of an outdated bank statement. Dissatisfied with this determination, the appellant applied for administrative review and, thereafter, this appeal.

Mr. Dickson contended that the appellant challenges its disqualification from the tender process on the grounds of having submitted an outdated bank statement. He asserted that the tender document did not stipulate any requirement for a bank statement to be issued subsequent to the date of the tender advertisement. He maintained that the absence of such a requirement should not be construed to the appellant's detriment.

Furthermore, he contended that the appellant provided a bank statement issued on 30th June 2025, which was merely fourteen (14) days prior to the date of the tender advertisement. It was his view that this timeframe does not materially affect the credibility or relevance of the bank statement, particularly in light of the absence of any requirement in the tender document specifying a post-advertisement issuance date.

Mr. Dickson stated further that, based on the appellant's experience in tendering, the submitted bank statement was current at the time of submission and fully satisfied the financial requirements as outlined in the tender document. He added that the appellant's bank statement clearly

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demonstrated its capacity to perform current and future contracts, rather than merely reflecting the cash balance.

In conclusion, the appellant respectfully prayed that the tender be awarded in its favor, as it was the lowest bidder relative to the other submissions.

REPLY BY THE RESPONDENT

The respondent's submissions were presented by Mr. Boaz Msoffe, State Attorney from the Office of the Solicitor General. He commenced by stating that the appellant was one of the tenderers that participated in this tender. During evaluation, the appellant's tender was deemed non-responsive due to submission of a bank statement issued on 30th June 2025 that predates the tender advertisement of 14th July 2025. Consequently, it was his argument that this bank statement could not be relied upon to demonstrate access to financial resources.

The learned state attorney submitted that pursuant to the "Qualification and Evaluation Criteria No. 3: Financial Situation and Performance – Access to Financial Resources (Source of Fund)", tenderers were required to provide details of their sources of finance sufficient to demonstrate their ability to access adequate funds to meet cash flow requirements for current and future contracts. In the case of Joint Venture, compliance requirements had to be met collectively by all parties, combined - Must Meet requirements) – Average Fund Amount from all sources (any freely convertible currency proposed bidder is TZS 114,000,000.00).

To buttress his position regarding the requirement, the learned State Attorney relied on the definition of the term "*current*" as per Oxford



Dictionary, to mean "belonging to the present time; happening or being used or done now."

He argued that the tenderer was required to demonstrate its financial capacity for both present and future projects. He elaborated that, since the tender was advertised on 14th July 2025, it was expected that the appellant would submit a bank statement issued between the date of the tender advertisement and the deadline for submission of tenders. He averred that, as tenderers were required to demonstrate their current financial position, any document issued prior to the date of the tender advertisement could not be considered current, as it would not accurately reflect the actual tenderer's financial status.

The learned State Attorney went on to submit that, if there was any ambiguity in the interpretation of the term *current*, the appellant ought to have sought clarification from the respondent as provided by law to enable it to submit relevant documents in accordance with requirements of the tender document.

The learned State Attorney admitted that the tender document was silent at the required time for demonstrating access to financial resources, however, tenderers were required to have a purposive interpretation of the requirement. He argued that tenderers were required to demonstrate their current financial status to substantiate their capacity to meet liabilities of current and future contracts. However, the appellant failed to comply with this requirement.



Additionally, the learned State Attorney stated that upon reviewing documents submitted by tenderers in the NeST, it was observed that the proposed awardee had submitted a line of credit dated 17th July 2025, from the NMB Bank which confirmed that it possessed a working capital of TZS 500 million, thereby disclosing the current financial status of the tenderer.

Considering the foregoing, Mr. Boaz concluded his submission by stating that the appellant was justifiably disqualified from the tender process. Therefore, he prayed that award of the Tender be granted to the proposed awardee and costs of the appeal be borne by the appellant.

ANALYSIS OF THE ISSUES

1.0 Whether disqualification of the Appellant's tender was justified

On the one hand, the appellant disputes its disqualification on account of submitting an outdated bank statement dated 30th June 2025, issued two weeks prior to the advertisement of the Tender. The appellant argued the tender document was silent on any requirement for tenderers to submit a current financial status at the date of the tender advertisement. Therefore, based on this requirement, the disqualification was improper.

On the other hand, the respondent claimed that pursuant to the "Qualification and Evaluation Criteria No. 3", tenderers were required to demonstrate access to financial resources sufficient to meet liabilities of current and future contracts by specifically having an amount of TZS 114,000,000. In this regard, the appellant's bank statement issued on 30th June 2025 did not adequately demonstrate its current financial position as mandated by the tender document since it predated the 14th July 2025



tender advertisement date. The respondent maintained that the disqualification was therefore justified.

In substantiating the parties' contentions, we reviewed Item 3 of the Qualification and Evaluation Criteria of the tender document, which states as follows:-

"Access to Financial Resources (Sources of Fund) (SCORE: N/A)

Tenderers are required to demonstrate details of their sources of finance that show their ability to access adequate finances to meet the cash flow requirements of current and future contracts. (In the case of a Joint Venture, compliance requirements are all Parties Combined — Must Meet requirements).

<i>Average fund amount from all sources (any freely convertible currency proposed by bidder)</i>	<i>114,000,000"</i>
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In terms of the provision, tenderers are required to demonstrate access to adequate finances sufficient to meet cash flow requirements for both current and future contracts. The average amount required from any sources was TZS 114,000,000. Notably, the provision did not specify a particular timeframe for the required sources of finance under this criterion.

In determining whether the appellant complied with the requirement, we reviewed the tender it submitted in NeST and noted that it submitted a



bank statement dated 30th June 2025, whereas the tender was advertised on 14th July 2025.

Additionally, we examined the evaluation report to assess the methodology employed in evaluating the criterion of access to financial resources. During this review, we noted that six out of seven tenderers submitted bank statements bearing dates prior to the tender advertisement. However, five tenderers were disqualified at the commercial evaluation stage, while one, M/S Advanced Engineering Company Limited qualified up to the financial evaluation stage but it was not considered for award for being ranked second lowest.

We also reviewed section 85(2) of the Act read together with regulation 194(2) of the Regulations, which reads as follows: -

"s.85(2) The tender documents shall be worded so as to permit and encourage competition and such documents shall set forth clearly and precisely all the information necessary for a prospective tenderer to prepare tender for the goods, services and works to be provided.

r.194(2) Tender documents shall be prescribed to permit and encourage competition, and such documents shall set out clearly and precisely all information necessary for a prospective tenderer to prepare a tender".

(Emphasis supplied)



These provisions unequivocally provide that, in the process of soliciting tenders, procuring entities are obligated to ensure the requirements set forth in the tender document are sufficiently clear to enable tenderers to submit responsive tenders and promote competition.

Relating these provisions to the facts of this appeal, we noted that there is serious challenge regarding the formulation and consequently, interpretation of "the access to financial resources criterion", resulting in the failure of six out of seven tenderers to comply with the requirement.

During the hearing, the respondent was asked to clarify its position on why it deemed a current bank statement to be those issued subsequent to the advertisement of the tender, given that the tender document was silent on this matter. In response, the respondent stated that, due to the absence of a specified timeframe for demonstrating access to financial resources in the tender document, it adopted a purposive interpretation during the evaluation process, concluding that the required documents should reflect the tenderers' current financial status.

Based on the respondent's submission, we are of the view that the "access to financial resources" criterion lacked clarity, leading the respondent to adopt a purposive interpretation that resulted in the mass disqualification of tenderers. Consequently, we find the respondent to have contravened section 85(2) of the Act, read together with regulation 194(2) of the Regulations cited above.

Furthermore, we reviewed regulation 210 (1) of the Regulations, which reads: -

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

(Emphasis supplied)

This provision stipulates that evaluation of tenders must be in accordance with the terms and conditions set forth in the tender documents, and such evaluation shall utilize criteria explicitly articulated therein.

Applying this provision to the facts of this appeal, we find that the respondent was obligated to evaluate the tenders in accordance with the criteria provided in the tender document. Thus, the respondent's decision to adopt a purposive interpretation to a criterion contained in the tender document resulted in a deviation from its intended meaning, effectively transforming it into an extraneous criterion. Based on this fact, we find the respondent contravened regulation 210(1) of the Regulations, which mandates that evaluation of tenders be consistent with terms and conditions outlined in the tender document.

In these circumstances, we conclude that the respondent's tender process did not comply with the requirements of the law. Consequently, we resolve the first issue in the negative, determining that the disqualification of the appellant's tender was not justified.

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

Taking cognizance of the above findings, we hereby allow the appeal and annul the tender process, along with the subsequent award made to the



proposed awardee. We hereby order the respondent to re-start the tender process in accordance with the law. We make no order as to costs.

It is so ordered.

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

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

This decision is delivered in the presence of the appellant and in the absence of the respondent though duly notified on this 18th day of September 2025.

HON. JUDGE (rtd) AWADH BAWAZIR



CHAIRPERSON

MEMBERS: -

1. ENG. LAZARO LOSHILAARI.....



2. MS. FLORENTINA SUMAWE.....

