

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 02 OF 2025 - 2026

BETWEEN

M/S SOFTMED COMPANY LIMITED.....APPELLANT

AND

MINISTRY OF HEALTH RESPONDENT

RULING

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (Rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu | - Member |
| 3. Mr. Raphael Maganga | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

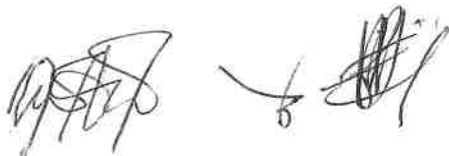
- | | |
|-------------------------|---------------------------|
| 1. Ms. Florida Mapunda | - PALS Manager |
| 2. Ms. Agnes Sayi | - Principal Legal Officer |
| 3. Ms. Violet Limilabo | - Senior Legal Officer |
| 4. Mr. Venance Mkonongo | - Legal Officer |

FOR THE APPELLANT

- | | |
|--------------------------|----------------------|
| 1. Mr. Sunday Morabu | - Managing Director |
| 2. Eng. Thadei Nzalalila | - Technical Director |

FOR THE RESPONDENT

- | | |
|-----------------------|---------------------------------|
| 1. Mr. Abel Nshashi | - Senior State Attorney |
| 2. Mr. Ephraim Matemu | - Principal Procurement Officer |
| 3. Mr. Veryeh Sambo | - Senior Data Manager |



4. Mr. Ebby Mwakajila

- Senior Supplies Officer

5. Mr. Jackson Shayo

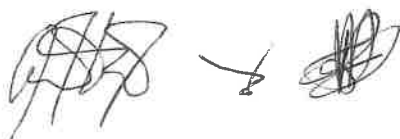
- Senior Information
Communication and
Technology Officer

The Appeal has been lodged by **M/S Softmed Company Limited** (hereinafter referred to as "**the Appellant**") against **the Ministry of Health** (hereinafter referred to as "**the Respondent**"). It is in respect of Proposal No. 52/2023/2024/C/93 for Provision of Consultancy Services for Supporting and Maintaining HIV Modules on a Unified Community System-NASHCoP (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 Quality and Cost Based Selection 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 30th July 2024, the Respondent through the National e-Procurement System of Tanzania (NeST) invited eligible tenderers to participate in the Tender. By 13th August 2024, the Respondent received four tenders including the Appellant's. The tenders were evaluated by the Evaluation Committee which recommended award of the Tender to the University of Dar es Salaam (**the proposed successful tenderer**) at a contract price



of Tanzania Shillings Four Hundred Seventy Million only (TZS 470,000,000) VAT exclusive for a completion period of 365 days.

On 24th June 2025, the Respondent issued a Notice of Intention to award which notified the Appellant the intention to award the contract to the proposed successful tenderer. Furthermore, the Notice stated that the Appellant's tender was not considered for award due to the following reasons: -

- i. It attached two audited financial statements for the year 2021 and 2022 instead of three years counted from 2020 to 2023.
- ii. The attached power of attorney was not stamped with the company seal.
- iii. It attached two annual average turnovers instead of three counted from 2020 to 2023.
- iv. It failed to comply with access to financial resources.

Dissatisfied with the reasons for its disqualification, on 1st July 2025, the Appellant applied for administrative review to the Respondent. However, the Respondent did not issue a decision as required. Consequently, on 16th July 2025, the Appellant filed the instant Appeal to the Appeals Authority.

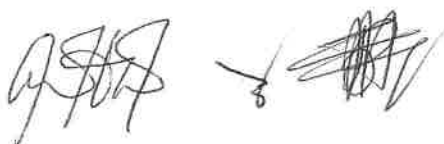
In this Appeal, the Appellant challenges the Respondent's addition of a criterion from experience of Unified Community System (UCS) built by using an open SRP to include the District Health Information System (DHIS2) platform. The Appellant failed to understand the Respondent's rationale for including DHIS2 in this Tender while the grant was for a UCS. It argued that the Respondent's actions appeared to favour the proposed successful tenderer who had already been awarded the DHIS2 project.

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Additionally, the Appellant challenges the Respondent's requirement for tenderers to have 15 years experience in this area while the system has only been in existence for six years. The Appellant questions whether the proposed successful tenderer truly meets the experience requirement.

In response to the Appellant's contention, the Respondent asserted that the criteria outlined in the Request for Proposal (RFP) were fair and not intended to favour any particular tenderer. It claimed the criteria were designed to attract a qualified consultant with the necessary experience and capabilities to support and maintain the specified modules within the UCS. The Respondent explained further that the requirement for 15 years of experience was included in the RFP to ensure that the selected consultant would be highly qualified for the execution of the intended work.

When the matter was called on for hearing and during the framing up the issues, the Appeals Authority *suo motu* informed the parties that it had identified a point of law from the record of the Appeal that needed to be determined to wit: "*Whether there is a valid Tender for determination by the Appeals Authority*". This point pertains to the tender validity period which must be determined before addressing the substantive merits of the Appeal. Consequently, the Appeals Authority required the parties to address this point and adjourned the hearing to accord them an hour for preparation. When the session resumed, the parties presented their arguments as follows: -

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SUBMISSIONS BY THE APPELLANT

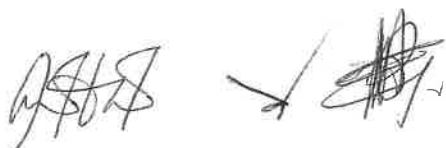
The Appellant's submissions were made by Eng. Thadei Nzalalila, Technical Director. He began by stating that the Tender was advertised on 30th July 2024 and the Tender opening took place on 13th August 2024. He stated that the bid validity period for this tender was 120 days as specified under Clause 25.1 of the Proposal Data Sheet (PDS).

Eng. Nzalalila submitted that the bid validity period is counted from the Tender opening date. Counting from 13th August 2024, the bid validity period of 120 days expired on 13th December 2024. He averred that section 86 of the Act requires the bid validity period to be specified in the Tender Document. Since the specified period in the RFP was 120 days, the Respondent was mandatorily required to finalize the Tender process within the specified period. To the contrary, the Respondent proceeded with the Tender until on 24th June 2025 when it issued the notice of intention to award the Tender to the proposed successful tenderer.

Eng. Nzalalila concluded his submissions by asserting that any actions taken by the Respondent after expiry of the bid validity period were null and void in the eyes of the law. And hence, there is no valid tender for determination by the Appeals Authority.

REPLY BY THE RESPONDENT

The Respondent's reply submissions were made by Mr. Abel Nshashi, senior State Attorney assisted by Mr. Ephrahim Matemu, Principal Procurement Officer. Mr. Nshashi commenced by stating that the RFP specified the bid validity period to be 120 days. These days were to be counted from the tender opening date which was on 13th August 2024.



Counting from the tender opening date, the bid validity period expired around December 2024.

The learned State Attorney submitted that prior to the expiry of the Tender, the Respondent carried out evaluation of the received tenders from 19th to 27th August 2024. Before completing other internal processes, the Respondent encountered challenges with the NeST, as some information from the Tender occasionally disappeared. As a result, they were unable to finalize the Tender within the specified bid validity period. After observing this challenge, the Respondent requested tenderers to extend the bid validity period by 120 days. He averred that the request was made through a letter dated 29th November 2024 which was sent via email to all tenderers except the Appellant whose tender was disqualified at the preliminary evaluation stage.

The learned State Attorney stated further that the Tender process was not finalized within the extended bid validity period, therefore the Respondent requested an additional extension of 40 days through a letter dated 28th March 2025. The second extended period expired on 10th May 2025 before finalizing the Tender process. It was his conclusion that the tender under Appeal has expired.

During the hearing, the Appeals Authority required the Respondent to clarify whether the tenderers accepted the request for extension of the bid validity period. In response, Mr. Matemu stated that the tenderers agreed to the request for an extension of the bid validity period; however, he was unable to provide letters from the tenderers because the Respondent had

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relocated to new offices at Mtumba. Hence, it was difficult to locate all the documents which were relevant for this Tender.

In view of the above, the learned State Attorney concluded his submissions by stating that, as the record clearly indicates, the tender expired in May 2025, leaving no valid tender for the Appeals Authority to consider in this Appeal.

ANALYSIS BY THE APPEALS AUTHORITY

1.0. Whether there is a valid Tender for determination by the Appeals Authority.

In resolving this issue, we took cognizance of both parties' admission that the bid validity period for this Tender was 120 days and had already expired. Since the Respondent had proceeded with the Tender process after expiry of the bid validity period and subsequently thereafter the Appellant filed this Appeal, we find it proper to enlighten the parties on the requirements of the law regarding the bid validity period as hereunder:

We start by reviewing section 86 of the Act and regulation 200(1) and (4) of the Regulations which read as follows: -

"s.-86. The procuring entity shall require tenderers to make their tenders and tender securities valid for periods specified in the tendering documents, sufficient to enable the procuring entity to complete the comparison and evaluation of tenders, approval of the recommendations, issuance of notification of award and signing of contract whilst the tenders and tender securities are still valid."

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"r. 200. -(1) The tender validity period shall be specified in the tender document.

(4) The period fixed by a procuring entity shall be sufficient to permit evaluation and comparison of tenders, to obtain all necessary clearances and approvals, and issue notification of the award of contracts and contract signing but shall not exceed one hundred and twenty days from the final date fixed for submission of tenders."

[Emphasis Added]

The above provisions require a procuring entity to specify a sufficient tender validity period to complete evaluation of tenders, obtain approval for the award recommendation, and finalize the contract signing while the tenders are still valid. Tenderers are also required to make their tenders valid for a period specified in the Tender Document.

We further reviewed the RFP and observed that Clause 25 of the PDS has specified the bid validity period to be 120 days. The record of Appeal indicates that tender opening took place on 13th August 2024. Since the bid validity period started to run from the tender opening date, the validity period for this tender expired on 11th December 2024.

During the hearing, the Respondent contended that prior to the expiry of the bid validity period it requested tenderers to extend the validity period for 120 days through a letter dated 29th November 2024. In addition, it alleged to have requested a second extension of 40 days through a letter dated 28th March 2025. However, the Respondent failed to substantiate



whether the requests were communicated to tenderers and if they were accepted.

To determine the validity of the Respondent's request for an extension of the bid validity period, we reviewed regulation 200(6), (7), and (8), of Regulations which state the following: -

"r. 200.- (6) A procuring entity may, prior to the expiry of the original tender validity period, request tenderers to extend the period for a further term not exceeding the original validity period, if there are justifiable grounds for the procuring entity failing to complete the tendering process within the specified time.

(7) A tenderer may refuse the request for extension of time under subregulation (6) without forfeiting its tender security and the effectiveness of its tender shall be terminated upon the expiry of the unextended period of effectiveness.

(8) The request by procuring entity to extend time of validity of a tender and the tenderer's response to accept or reject such request shall be submitted in writing."

[Emphasis supplied]

The provision outlines exceptional circumstances under which a procuring entity may request tenderers to extend the bid validity period, provided that request is made before the initial validity period expires. A tenderer may decline the request without forfeiting its tender security and the



effectiveness of its tender will be terminated upon expiration of the un-extended period. In addition, a tenderer's acceptance or refusal to extend the tender validity must be communicated in writing.

We applied the quoted provision to the facts of this Appeal and observed that much as the Respondent contended to have requested tenderers to extend their bid validity period, it failed to furnish proof whether the tenderers accepted or declined the requests. Since the Respondent failed to justify whether tenderers accepted the request for extension of the bid validity period as required by the law, no extension was granted.

Considering this fact, we conclude that the Tender under Appeal expired on 11th December 2024, when the initial bid validity period specified in the RFP lapsed.

Given the above finding, we are of the firm view that all actions taken by the Respondent after the bid validity period expired on 11th December 2025, which included issuance of the Notice of intention to award dated 24th June 2025, are null and void, as they contravene the requirements of section 86 of the Act and regulation 200(4) of the Regulations cited hereinabove.

Under the circumstances, the Appeals Authority hereby nullifies the Tender process due to the expiration of the tender validity period.

Consequently, the Appeals Authority concludes the raised issue in the negative that there is no valid tender for determination by the Appeals Authority.

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The Appeals Authority hereby dismisses the Appeal due to the expiration of the tender validity period and orders each party to bear its own costs.

It is so ordered.

This Ruling 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 Ruling is delivered in the presence of the parties this 15th day of August 2025.

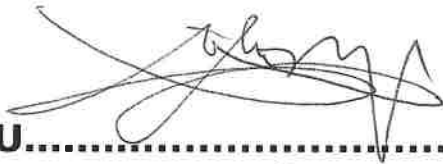
HON. JUDGE (rtd) AWADH BAWAZIR



CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU.....



2. MR. RAPHAEL MAGANGA.....

