

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 15 OF 2025 - 2026

BETWEEN

M/S JAFFERY IND. SAINI LIMITED APPELLANT

AND

e-GOVERNMENT AUTHORITY RESPONDENT

DECISION

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (Rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. Gladness Salema | - 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. Vishal Saini | - Managing Director |
| 2. Mr. Baraka Mbughi | - Procurement Specialist |

FOR THE RESPONDENT

- | | |
|-------------------------|--|
| 1. Mr. Boaz Msoffe | - State Attorney appeared via
Zoom Video conference |
| 2. Ms. Hidaya Hussein | - Procurement Manager |
| 3. Mr. Raphael Rutaihwa | - Legal Services Manager |



This appeal, filed by **M/S Jaffery Ind. Saini Limited** (hereinafter referred to as "**the appellant**"), is against the **e-Government Authority**, abbreviated as "**e-GA**" (hereinafter referred to as "**the respondent**") pertaining to **Tender No. TR97/2025/2026/G/11** for *Supply and Installation of Office Furniture for HQ Building* (hereinafter referred to as "**the tender**").

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

The Tender was done through the Restrictive 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**").

According to the record of appeal, on 11th August 2025, the respondent invited four eligible tenderers to participate in the Tender through the National e-Procurement System of Tanzania (NeST). By the submission deadline of 28th August 2025, two tenders, including that of the appellant, were received and subsequently evaluated by the Respondent. Both tenders were found non-responsive at the preliminary evaluation stage and therefore disqualified.

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The evaluation report was presented to the respondent's tender board during its meeting on 1st September 2025. After deliberation, the tender board resolved to reject the tender and re-advertise it.

On 2nd September 2025, the respondent notified the appellant that the tender was rejected because all submitted tenders failed to meet the requirements specified in the tender document.

On 17th September 2025, the respondent re-advertised the tender. By the 23rd September 2025 deadline, three tenders, including the appellant's, were received and subsequently evaluated by the respondent.

Thereafter, the Evaluation Committee recommended awarding the tender to M/S Al-Ridha Industries Limited ("**the proposed awardee**") at a contract price of Tanzania Shillings Two Billion Seven Hundred Thirty-Two Million Three Hundred Fifty Thousand only (TZS 2,732,350,000), VAT exclusive for a delivery period of 90 days.

On 1st October 2025, the respondent issued a notice of intention to award, informing the appellant of its decision to award the contract to the proposed awardee. It further stated that the appellant's tender was not considered for award because it was not the lowest evaluated tender at the financial evaluation stage.

Dissatisfied with the disqualification, on 7th October 2025, the appellant applied for administrative review to the respondent who rejected it through a decision dated 8th October 2025. Aggrieved further, the appellant filed this appeal to the Appeals Authority on 10th October 2025.

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

- 1.0 Whether the respondent has a justifiable reason for rejecting the first advertised tender.**
- 2.0 Whether the disqualification of the appellant's tender in the re-advertised tender was justified.**
- 3.0 What reliefs, if any, are the parties entitled to?**

SUBMISSIONS BY THE APPELLANT

The appellant's submissions were made by Mr. Baraka Mbughi, Procurement Specialist, assisted by Mr. Vishal Saini, Managing Director. Mr. Mbughi submitted that the respondent erred in law by rejecting the tender, contrary to the provisions of section 68 (3) (a) and (b) of the Act. He argued that this provision permits rejection only in cases of lack of competition and mandates that, if the tender is to be re-advertised, the tender requirements must be revised. He stated that although the respondent rejected the first tender and re-advertised it, the new tender document remained unchanged, contrary to the requirements of the law.

Mr. Saini added that since the tender document was not revised, it was expected that tenderers participating in the second round would maintain their original bids, except for submitting the missing 2024 financial statements which had caused the re-advertisement.



He was perplexed that the proposed awardee reduced its quoted price from TZS 3,925,978,000.00 (VAT inclusive) in the first tender to TZS 3,224,173,000.00 (VAT inclusive) in the second. He argued that, given no changes to the technical requirements, tenderers should have maintained their original prices. He was of the view that the proposed awardee's price reduction of TZS 701,805,000.00 undermines the principles of competition and fairness.

Mr. Saini went on to contend that the proposed awardee's quoted price is unrealistically low and abnormal, risking supply of substandard furniture. Drawing on the appellant's over 45 years of industry experience, he stated that it is impossible to supply and install the required furniture at such a price. The quoted amount does not reflect the actual cost, and thus the tender should have been rejected as abnormally low.

On his part, Mr. Mbughi explained that clause 11.2 of the *Guidelines for Determination of Major and Minor Deviations*, issued by the Public Procurement Regulatory Authority (PPRA) in May 2025, distinguishes between minor deviations which do not materially alter a tender's substantial requirements and major deviations, which do. In the first tender, the failure to submit 2024 financial statements was a minor deviation. The respondent could have rectified this by seeking clarification or requesting tenderers to submit the missing documents, or waiving the requirement, as it did not materially affect the tender. He argued that re-advertising the tender unnecessarily increased government costs, which could have been avoided by allowing tenderers to submit the missing documents.



Mr. Saini noted that the tender document required submission of samples by the tender deadline. While the appellant complied by submitting samples on time, the proposed awardee planned to submit theirs on Monday after the deadline, despite already being awarded the tender. He argued the respondent should have disqualified the proposed awardee for failing to submit the required samples rather than proceeding with the award. Mr. Saini complained that these irregularities demonstrate the respondent's tender process was flawed.

In conclusion, the appellant requested that the Appeals Authority review the tender documents and evaluation reports from both the first and second tenders to determine whether they complied with legal requirements.

REPLY BY THE RESPONDENT

The respondent's reply submission was made by Mr. Boaz Msoffe, learned State Attorney from the Office of the Solicitor General. Mr. Msoffe began by emphasizing the fundamental legal principle that parties are bound by their own pleadings. He cited Regulation 19 of the Public Procurement Appeals Regulations, GN. No. 65 of 2025 (hereinafter referred to as "**the Appeal Rules**"), which prohibits a tenderer from raising new grounds during the appeal hearing without prior leave from the Appeals Authority.

He noted the appellant introduced new grounds of appeal during the submission in chief, regarding the submission of samples by the proposed awardee and a prayer to review the tender document and the evaluation report for both tenders, which were not part of the original grounds of



appeal. Consequently, Mr. Msoffe requested the Appeals Authority to disregard and expunge these new grounds from the appeals record.

To support this position, he cited PPAA Appeal Case No. 03 of 2025-26 between ***M/S Technowise Company Ltd and Ministry of Communication and Information Technology***, where the Appeals Authority expunged new grounds raised at the hearing.

Addressing the merits, Mr. Msoffe adopted the respondent's reply to the Statement of Appeal as part of his submissions. He explained that the appellant's main contention centered on section 68(3) (a) and (b) of the Act, alleging that the respondent failed to comply with this provision when rejecting the first tender and re-advertising it without issuing a new tender document. The appellant had argued that since the rejection was based on the tenderers' failure to submit financial statements, the respondent should have treated this as a minor deviation under clause 11.2 of the *Guidelines for Determination of Major and Minor Deviation* by allowing submission of the missing document.

In rebuttal, Mr. Msoffe submitted that the notice for rejecting all tenders was communicated to the appellant on 2nd September 2025. If aggrieved, the appellant should have invoked section 120 (1), (2), and (6) of the Act, read together with regulation 108 of the Regulations, which allow filing of an application for administrative review to the respondent within five working days of becoming aware of the circumstances giving rise to the complaint. He noted that the appellant failed to exercise this right in a timely manner. Therefore, under these provisions, he argued that the

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appellant is barred from raising issues known prior to the issuance of the notice of intention to award. Any complaints after receiving the notice should have related to the re-advertised tender in which the appellant participated.

Mr. Msoffe further submitted that section 112(6) of the Act mandates the Appeals Authority to hear and determine complaints which were previously submitted to the accounting officer of the procuring entity. Since the appellant raised new issues which were not presented to the respondent, these contravene section 112(6) of the Act and should not be entertained at this juncture.

Regarding the appellant's contention about the re-advertised tender, Mr. Msoffe submitted that the appellant did not raise this issue in its statement of appeal but introduced it during the hearing, claiming the award to the proposed awardee was unjustified due to an unrealistic and drastically reduced quoted price compared to the rejected tender.

In response, Mr. Msoffe stated that the appellant's tender was excluded from award because the financial evaluation revealed it had a higher price than the proposed awardee's. He urged us to find this disqualification was fair and in accordance with regulations 173, 210, 219 and 220 of the Regulations, which require awarding the contract to the lowest evaluated tenderer, in this case, the proposed awardee.

He buttressed his argument with references to PPAA Appeal Case No. 15 of 2022-23 between ***M/S China Gezhouba Group Company Ltd and Dar es salaam Water Supply and Sanitation Authority (DAWASA)*** and

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PPAA Appeal Case No. 02 of 2024-25 between ***M/S Secmore Investment Company Ltd and University of Dodoma (UDOM)***, where the Appeals Authority upheld the procuring entities' decision of awarding tenders to the lowest evaluated tenderer.

Mr. Msoffe went on to argue that since the tender was a re-advertised one, the appellant was free to revise its quoted price. He said the appellant was aware of the proposed awardee's initial price and could have chosen to maintain or adjust it. Therefore, the price reduction by the proposed awardee did not violate competitive fairness.

On the appellant's reliance on section 68(3) of the Act, Mr. Msoffe clarified that this provision is inapplicable in the circumstances of this appeal. The initial tender was rejected pursuant to section 68(2)(b) as all tenders were found to be non-responsive and not vide section 68(3) of the Act relied upon by the appellant which covers scenarios of lack of competition. Thus, section 68(3) does not apply to this case.

In conclusion, Mr. Msoffe prayed for the Appeals Authority to dismiss the Appeal with costs for lack of merit and to allow the respondent to proceed with the tender process.

ANALYSIS BY THE APPEALS AUTHORITY

Before examining the parties' contentions in this appeal, we acknowledge the respondent's preliminary concern that the appellant introduced two new grounds that were not included in the original grounds of appeal. These grounds pertain to the submission of samples by the proposed

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awardee and the request to the Appeals Authority to review the tender documents and the evaluation reports for both tenders.

We find guidance of the above issue in regulation 19 of the Appeals Regulations, which provides as follows: -

"r.19 Wakati wa usikilizwaji wa shauri wahusika hawatawasilisha hoja mpya ambazo hazikuwepo awali katika hati za shauri isipokuwa pale ambapo wameruhusiwa na Mamlaka ya Rufani".

(Emphasis supplied)

This provision prohibits parties from raising new issues during hearing that were not included in the pleadings. A new issue may only be introduced with the leave of the Appeals Authority.

It is evident that during the hearing, the appellant indeed raised a new ground concerning the submission of samples by the proposed awardee, which was not part of the original pleadings. However, the appellant's prayer for a review of the tender documents and evaluation reports for both tenders was included in the statement of appeal under the remedies section.

Since we did not grant the appellant leave to raise the new issue regarding the submission of samples, we hereby expunge this ground from the record of appeal. The appellant's prayer to review the tender documents and evaluation reports will be considered alongside the other grounds of appeal, as it was properly included in the statement of appeal.

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Given the above position, we will proceed to determine the appellant's grounds of appeal as follows: -

1.0 Whether the respondent has a justifiable reason for rejecting the first advertised tender.

In resolving this issue, we reviewed the record of appeal and noted that the appellant initially stated in the statement of appeal that it challenges the respondent's rejection of the tender for contravening section 68(3) of the Act. However, during the hearing, the appellant clarified that it is not contesting the tender rejection, but rather the respondent's failure to comply with the requirements of section 68(3) (a) and (b) of the Act. This provision requires that a tender document should be reviewed if the tender is re-advertised due to lack of competition.

The appellant asserted that in the re-advertised tender, the tender document was not revised; instead, tenderers were required to submit financial statements for the year 2024, which had not been submitted in the rejected tender. The appellant contended that since the tenderers' quoted prices were known from the rejected tender and no changes were made to the tender document for the re-advertised tender, the competitive position of the tenderers was unfairly compromised. This situation allegedly enabled the proposed awardee to reduce its earlier quoted price by TZS 701,805,000.00. Consequently, the appellant argued that the respondent contravened the Act and its Regulations by hindering competition in the tender process.

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In response, the respondent stated that issues related to the tender rejection cannot be raised at this juncture because the appellant was aware of the rejection since 2nd September 2025 and the new tender document, which allegedly infringes competition from 17th September 2025. The respondent maintained that if the appellant believed the rejection and subsequent re-advertisement were unlawful, it should have challenged them under section 120(1),(2) and (6) of the Act read together with regulation 108 of the Regulations. Instead, the appellant raised these issues only after receiving the notice of intention to award pertaining to the re-advertised tender. Therefore, the respondent contended that the appellant's contentions lack merit.

To assess the validity of these arguments, we reviewed the record of appeal and found that the first tender was advertised on 18th August 2025. Only two tenderers the appellant and the proposed awardee submitted bids. The evaluation report reveals that both tenders were disqualified at the preliminary evaluation stage for failing to submit financial statements for the year 2024, rendering all tenders non-responsive. Following this, the respondent decided to re-advertise the tender.

The respondent re-advertised the tender on 17th September 2025. Tender opening was on 23rd September 2025, with only three tenderers, including the appellant who submitted tenders. After completion of the evaluation process, the respondent issued the notice of intention to award on 1st October 2025, prompting the appellant to file the application for administrative review with the respondent and subsequently this appeal.

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Section 120 (1) and (4) of the Act reads as follows: -

"s.120.-(1) Any complaint or dispute between a procuring entity and a tenderer which arises in respect of procurement proceedings, disposal of public assets and award 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.

*(4) The accounting officer shall not entertain a complaint or dispute unless **it is submitted within five working 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**".*

[Emphasis added]

The above provision stipulates that any complaint or dispute arising between a tenderer and a procuring entity during the procurement process must be resolved by the accounting officer of a procuring entity, provided that the complaint is submitted within five (5) working days from the date it became aware of the circumstances giving rise to the complaint.

Applying the requirements of section 120 (1) and (4) of the Act to the facts of this appeal and in the light of the appellant's arguments, we observe that the appellant was aware of the unchanged tender document as of 17th September 2025. From that date, the appellant should have recognized that since the tender document remained the same and the prices from the rejected tender were known, the competitive position of tenderers in the



re-advertised tender could have been adversely affected. Accordingly, the appellant was required to challenge the respondent's actions in accordance with section 120 (1) and (4) of the Act.

Furthermore, since the tender opening was on 23rd September 2025, the appellant was aware that the proposed awardee had reduced its quoted price by TZS 701,805,000.00 compared to the rejected tender. If the appellant believed this price reduction compromised the competitive rights of tenderers, it should have filed an application for administrative review with the respondent within five working days, i.e., on or before 30th September 2025. The respondent would then have been obligated to issue a decision within five working days, by 7th October 2025. If the appellant was dissatisfied with the respondent's decision or if no decision was issued, the appellant was required to file an appeal with the Appeals Authority within five working days in accordance with section 121(2) of the Act.

Given that the circumstances forming the basis of the appellant's grounds of appeal were known from 17th September 2025 or 23rd September 2025, the appellant should have raised its concern within the prescribed timelines under section 120 (1) and (4) of the Act. Therefore, the appellant's complaint on the hindrance of competition after receiving the notice of intention to award appears to be an afterthought, especially in view of its having submitted a higher price than that of the proposed awardee which led it not being considered for award.

In view of the above findings, we conclude that the appellant's claim that the respondent contravened section 68(3) of the Act, resulting in unfair

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competition, were raised out of time and in violation of sections 120(1), (4) and 121(2) of the Act. Given the findings hereinabove and the appellant's own admission during the hearing that it is not challenging the reasons given for the rejection of the tender, our hands are tied and we cannot therefore proceed to determine whether the respondent had justifiable grounds to reject the previous tender.

2.0 Whether the disqualification of the appellant's tender in the re-advertised tender was justified.

In addressing this issue, we considered our earlier findings that the appellant should have raised concerns about the proposed awardee's quoted price from the date tenders were opened. Nonetheless, since the appellant participated in the re-advertised tender, it is appropriate to examine whether its disqualification was justified.

To this end, we reviewed the record of appeal and noted that the appellant was one of the three tenderers who submitted bids. During the financial evaluation, the appellant's tender was ranked second, with a quoted price of TZS 2,833,158,100.00 while the proposed awardee's price was TZS 2,732,350,000.00, both amounts exclusive of VAT.

We reviewed regulations 213, 218 and 219 of the Regulations which read as follows: -

"r. 213.-(1) The procuring entity's determination of a tender's responsiveness shall be based on the contents of the tender itself without recourse to extrinsic evidence.

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r. 218. A procuring entity shall evaluate and compare all tenders that are accepted in order to ascertain the successful tender, in accordance with the procedures and criteria prescribed in the tender documents.

*r. 219. **The successful tender shall be-***

*(a) **the tender with the lowest evaluated tender price** in case of goods, works or services, or the highest evaluated tender price in case of revenue collection, but not necessarily the lowest or highest submitted price, subject to any margin of preference applied."*

[Emphasis Added]

These provisions require a procuring entity to evaluate tenders based solely on the contents of the tender document and the tenders submitted, without reference to any extrinsic evidence. Furthermore, the tender must be awarded to the lowest evaluated tenderer.

Applying these provisions to the facts of this appeal, we find that the tender evaluation was in accordance with the requirements set out in the Tender Document and the submitted tenders. Upon completion of the evaluation, the appellant's tender was ranked the second, while the proposed awardee was ranked the first and consequently recommended for award of the tender.

In the context of regulation 213 of the Regulations, extrinsic evidence includes any evidence which did not form part of the tender in question.

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That is, not part of the tender document or bids submitted by tenderers. We considered the appellant's arguments that the tender document and the evaluation report for the rejected tender were to be considered during evaluation of the disputed tender and observe that the same would amount to considering extrinsic evidence.

Regarding the appellant's argument that the Appeals Authority should also consider the tender document and the evaluation report from the rejected tender, we clarify that once a tender is rejected and a new one is advertised, the rejected tender is no longer valid. Therefore, the determination of a successful tender must be based solely on the re-issued tender document and tenders submitted under the new advertised tender. Thus, the rejected tender cannot serve as a basis for determining the re-advertised tender.

Under these circumstances, we conclude affirmatively on the second issue that the disqualification of the appellant's tender in the re - advertised tender was justified.

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

Considering the above findings, we dismiss the appeal for lack of merit. The respondent is hereby ordered to proceed with 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 parties have been informed of their right to Judicial Review as per section 125 of the Act.

This decision is delivered in the presence of the parties on this 10th day of November 2025.

HON. JUDGE (rtd) AWADH BAWAZIR



.....
CHAIRPERSON

MEMBERS: -

1. DR. GLADNESS SALEMA.....



2. MR. RAPHAEL MAGANGA.....

