

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 18 OF 2025-26**

**BETWEEN**

**M/S FASTLINK SAFARIS & TOURS LIMITED ..... APPELLANT**

**AND**

**ELECTRICAL TRANSMISSION AND DISTRIBUTION  
CONSTRUCTION AND MAINTENANCE CO. LTD ..... RESPONDENT**

**DECISION**

**CORAM**

1. Hon. (rtd) Judge Awadh Bawazir	- Chairperson
2. Eng. Lazaro Loshilaari	- Member
3. Ms. Sarah Bisanda	- Member
4. Mr. James Sando	- Secretary

**SECRETARIAT**

1. Ms. Agnes Sayi	- Principal Legal Officer
2. Ms. Violet Limilabo	- Senior Legal Officer
3. Mr. Venance Mkonongo	- Legal Officer

**FOR THE APPELLANT**

1. Mr. Revocatus Ludovick	- Business Development Manager
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**FOR THE RESPONDENT**

1. Ms. Norah Mtau	- Head of Procurement Management Unit (HPMU)
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This appeal, filed by **M/s Fastlink Safaris & Tours Limited** (hereinafter referred to as "**the appellant**"), challenges the decision of **Electrical Transmission and Distribution Construction and Maintenance Company Limited** abbreviated as **ETDCO** (hereinafter referred to as "**the respondent**") regarding Tender No. FA/2025/2026/62620/TR005/NC/01 for Procurement of Air Tickets (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: -

On the 18<sup>th</sup> of August 2025, the respondent issued an invitation through the National e-Procurement System of Tanzania (**NeST**) for eligible tenderers to participate in the Tender. By the 25<sup>th</sup> of August 2025 submission deadline, twenty-four tenders, including that of the appellant were received and subsequently evaluated. Thereafter, award was proposed to M/s Blueberry Voyage Limited (**the proposed awardee**) at a contract price of Tanzania Shillings Zero point Zero One per unit (Tzs 0.01).

On the 15<sup>th</sup> of November 2025, the respondent issued a Notice of Intention to Award, informing the appellant of its intention to award the contract to the proposed awardee. It further stated that the appellant's tender was disqualified due to the submission of one contract that did not comply with the requirement set forth in the tender document.

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Dissatisfied with the disqualification, the appellant applied for administrative review to the respondent on the 25<sup>th</sup> of November 2025. However, the respondent did not respond. Consequently, on the 27<sup>th</sup> of November 2025, the appellant filed this appeal to the Appeals Authority.

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

**1.0 Whether the disqualification of the appellant's tender was justified.**

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

**SUBMISSIONS BY THE APPELLANT**

The appellant's submissions were made by Mr. Revocatus Ludovick, its Business Development Manager. He challenged the disqualification on two grounds: (i) a substantive breach of the principles of equality and fairness; and (ii) the respondent's failure to respond to the appellant's complaint.

On the first ground, Mr. Ludovick submitted that the appellant participated in the tender issued by the respondent and, on the 15<sup>th</sup> of November 2025, it received a Notice of Intention to Award stating that its tender was not considered because one of the attached contracts allegedly did not meet the tender document's requirements. He complained that the basis for disqualification was incorrect. He said that according to the criteria provided in the tender document, tenderers were required to demonstrate specific experience by submitting at least three (3) contracts, each valued at not less than TZS 50,000,000/-, executed between the 1<sup>st</sup> of

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January 2022 and 31<sup>st</sup> of December 2024, or, if ongoing, completed to at least (80%) completion within the stipulated timeframe. He explained that the appellant submitted over ten (10) contracts that met or exceeded the stated value and were within the timeframe requirements.

Mr. Ludovick further noted that four (4) of submitted contracts fully complied with the specified timeframe and the minimum value. Therefore, he contended that disqualification of the appellant's tender based on a single contract was unjustified and contravened the tender document's requirements.

Additionally, he emphasized that the disqualification was based on assertions that were neither accurate nor verified concerning the number and value of the contracts submitted. By relying on these erroneous grounds, the respondent breached the fundamental principles of equality of opportunity and fairness of treatment under section 5(3)(a) and (b) of the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**").

In the second ground, Mr. Ludovick submitted that the Notice of Intention to Award gave tenderers five working days from the 15<sup>th</sup> of November 2025 to the 18<sup>th</sup> of November 2025, to file an application for administrative review. And the appellant duly submitted its complaint on the 17<sup>th</sup> of November 2025 through NeST but received no response from the respondent.

In conclusion, the appellant prayed to the Appeals Authority to grant the following reliefs: -

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- i) Nullification of the respondent's decision to enter into the Framework Agreement with the proposed awardee.
- ii) An order directing the respondent to conduct a detailed re-evaluation of the appellant's tender, focusing specifically on submitted contracts.
- iii) A Declaration that the appellant was denied fairness and equality of opportunity in the procurement process.

### **REPLY BY THE RESPONDENT**

The respondent's submissions were made by Ms. Norah Mtau, Head of the Procurement Management Unit (HPMU). She acknowledged that the appellant participated in the tender and submitted multiple contracts to demonstrate specific experience in works of a similar nature. Ms. Mtau alleged that one of these contracts was forged, which formed the basis for the appellant's disqualification. After suspicion of forgery, the respondent contacted the purported issuing client, who confirmed that the contract was not issued by them.

Ms. Mtau further explained that, as a member of the HPMU, she noted the Notice of Intention had incorrectly stated the reason for the disqualification of the appellant's tender. After discovering this error, she advised the Chairperson that the reason should be amended to align with the evaluation report's findings.

She also clarified that the requirement for tenderers to submit contracts valued at TZS 50,000,000/= each was intended to verify the financial capability of tenderers' to execute the contract. However, the criterion was waived after consultations with the Accounting Officer,

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although tenderers were not formally notified of this waiver. Consequently, no tenderer was disqualified based on this requirement.

Concerning the second ground, Ms. Mtau conceded that the respondent was obliged to respond to the appellant's administrative review application within the prescribed timeframe. However, she stated that the respondent was unaware that complaints had to be processed through the NeST system, as no official notification had been issued to that effect.

In conclusion, Ms. Mtau, for the respondent urged the appeals Authority to dismiss the appeal and allow the procurement process to proceed.

### **REJOINDER BY THE APPELLANT**

In rejoinder, Mr. Ludovick submitted that while the respondent claimed the disqualification of the appellant's tender was due to submission of a forged contract, the Notice of Intention to award cited that the appellant had attached only one contract which did not comply with the tender document's requirements. He argued that the respondent was obliged to ensure that the Notice accurately reflected the true grounds for disqualification and it should not have issued a Notice based on an incorrect reason.

Mr. Ludovick further noted that the respondent failed to produce any documentary evidence from the client to substantiate the forgery allegation.

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He reiterated that the tender document required contracts to have a value of TZS 50,000,000/=, yet, the respondent claimed to have waived this criterion without notifying tenderers. As a result, tenderers could not have known their tenders would not be evaluated on this requirement. The appellant maintained that its disqualification was unjustified.

## **ANALYSIS BY THE APPEALS AUTHORITY**

### **1.0 Whether the disqualification of the appellant's tender was justified**

The appellant disputes the disqualification, arguing that the stated reason for failure to meet the specific experience criterion for submitting only one contract contradicts the tender document requirements. The appellant contends that it submitted more than ten (10) contracts that met the tender's specified value and timeline criteria, rendering the disqualification unjustified.

Conversely, the respondent maintains that during the evaluation of tenders, one of the contracts submitted by the appellant to demonstrate the specific experience criterion was found to be forged and unauthentic, which justified its disqualification.

To resolve the parties' conflicting claims, we examined section IV - Qualification and Evaluation Criteria, under Technical Evaluation, specifically Item 2 – Experience, which outlines the requirements for Specific Experience. The Item reads as follows: -

#### *"2. Experience*

***Specific Experience (SCORE: Comply/Not Comply to specified minimum requirements)***

*Specific and Contract Management Experience: A minimum number of similar contracts based on the physical size, complexity, methods/technology and/or*

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*other characteristics described in the PE Requirements on contracts that have been satisfactorily and substantially completed (substantial completion shall be based on 80% or more of completed assignments under the contract) as a prime contractor/supplier/service provider, joint venture member, management contractor/supplier/service provider or subcontractor/supplier/service provider for mentioned duration. (In case of Joint Venture, compliance requirements are: All Parties – Must Meet requirements). In the case of JVCA, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JVCA meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.*

<i>Specific Experience</i>	<i>Provide at least three documentary of evidence of providing services with nature (sic)</i>
<i>Specific Experience Start Year</i>	<i>2022-01-01</i>
<i>Specific Experience End Year</i>	<i>2024-12-31</i>
<i>Number of Specific Experience Contracts</i>	<i>3</i>
<i>Value of each Specific Experience Contract in the specified tender currency</i>	<i>50000000"</i>

The criterion required tenderers to demonstrate compliance with the specific experience requirement by submitting three (03) contracts of a similar nature to the tender in question, executed between the 01<sup>st</sup> of January 2022 to the 31<sup>st</sup> of December 2024, each with a value of TZS 50,000,000.

During the hearing, the appellant claimed to have submitted more than ten (10) contracts to meet the criterion. However, only four (4) of these



contracts fell within the required timeframe and met the stipulated value of TZS 50,000,000/-.

A review of the appellant's tender submitted in NeST revealed that, at the section for proving specific experience, the appellant had attached various contracts and documents. But only the following contracts were within the required timeframe:-

- i) A contract with Amalgamating Setse Ltd on Travel Agency Services signed on the 12<sup>th</sup> of April 2022. In this contract, no value was indicated and it was also incomplete, with some pages missing.
- ii) A Vendor Agreement with Smart Codes dated the 06<sup>th</sup> of July 2023, which lacked a stated value. The contract had no value and had some pages missing.
- iii) A contract with Community Wildlife Management Areas Consortium (CWMAC) on Travel Agency Services), signed on the 15<sup>th</sup> of January 2023. This contract did not disclose its value and was incomplete due to missing pages.
- iv) A contract with DMA Limited for Air Travel Services, entered on the 23<sup>rd</sup> of August 2023. This contract also lacked a value and had missing pages.
- v) A closed framework agreement No. FA/2023/2024/TR57/NC/04/1 for provision of Air Travelling Tickets with the National Identification Authority (NIDA) signed on the 12<sup>th</sup> of April 2024, which did not specify the contract value.

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While these contracts were executed within the tender's specified timeframe, none disclosed the required contract value, and several were incomplete due to missing pages.

During the hearing, both parties acknowledged that, due to the nature of such contracts in the industry, the contract value is usually not disclosed at the time of signing but is determined only upon completion. Based on this, the respondent decided to waive the requirement that each contract should have a value of TZS 50,000,000/- during the evaluation process. The respondent further stated that no tenderers were evaluated against this criterion. However, it did not submit any document to substantiate that this criterion had been officially waived, including any approval or concurrence from the Accounting Officer. This is significant given that the criterion was clearly stated in both the tender document and in the evaluation report.

In these circumstances, we are of the settled view that, since both parties agree that the contract value is not disclosed at signing, the respondent erred in including a requirement in the tender document that tenderers should submit contracts valued at TZS 50,000,000/. Given the principle that tenders must be evaluated strictly in accordance with the Tender Document, all tenderers were obligated to comply with the specified experience criterion as originally stated.

Regulations 211 (2) (k) and 213(1) and (2) of the Public Procurement Regulations, GN. No. 518 of 2024 (hereinafter referred to as "**the Regulations**") read as follows: -

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"r.211 (2) *The following deviations from substantial commercial terms and conditions shall justify rejection of a tender:*

***(k) failure to submit major supporting documents to determine substantial responsiveness of a tender as stipulated in the tender documents.***

*r.213. - (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.***

*(2) Where a tender is not responsive to the tender document, it shall be rejected by the procuring entity, and may not subsequently be made responsive by correction or withdrawal of that deviation".*

(Emphasis supplied)

These provisions mandate that tenders must be evaluated strictly in accordance with the requirements set forth in the Tender Document. It further establishes that failure to submit any essential document required by the tender document affects the determination of a tender's substantial responsiveness. Accordingly, we find that the disqualification of the appellant's tender for failing to meet the specific experience requirements, as stipulated in the tender document, was consistent with these legal provisions.

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We further examined the tender submitted by the proposed awardee in the NeST to verify whether the same criterion was applied uniformly. The proposed awardee submitted thirty-one (31) different documents to satisfy the specific experience requirement. Among these was a contract with Ajanta Pharma Ltd, signed on the 7<sup>th</sup> of September 2024 valued at USD 54,716. This contract met the criterion, as its value exceeded TZS 50,000,000/- and fell within the required timeframe.

However, the remaining contracts included, among others, a contract for the Office of the National Assembly valued at 0.12 Tsh, a contract with the Mining Commission valued at 0.12 Tsh, a contract with the Ministry of Energy valued at 83.00 Tsh, and a contract with the Tanzania Food and Nutrition Centre valued at 0.12 Tsh. Considering that both parties agreed that the nature of such contracts does not disclose value at the time of signing, it follows that the proposed awardee also failed to comply with the requirement to submit three (3) contracts each valued at TZS 50,000,000/-.

Based on these findings, we hold that while the appellant was properly disqualified under this criterion, the award of the tender to the proposed awardee was also improper due to the absence of contract values as required by the tender document.

Next, we considered the respondent's claim that, during evaluation, it was discovered the appellant submitted a forged contract to demonstrate the specific experience criterion. Upon review of the appellant's contracts in NeST, we observed that the Vendor Agreement with Smart Codes dated the 06<sup>th</sup> of July 2023 showed erasures and overwriting at the appellant's name section.

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At the hearing, Ms. Mtau for the respondent, explained that these alterations raised doubts about the document's authenticity. She further stated that verification with Smart Codes Ltd revealed no such agreement existed with the appellant. Based on this, the respondent concluded that the appellant's other submitted contracts were also unreliable, leading to the appellant's disqualification. We find this assertion unsupported by conclusive expert evidence confirming forgery and therefore legally unfounded and unjustified, since the appellant submitted four other contracts within the stipulated timeframe.

Regarding the appellant's contention that the respondent failed to respond to its application for administrative review within the statutory timeframe, the respondent countered that it was unaware that tenderers' complaints are now handled through the NeST, as it has not received any notification to that effect.

We reviewed section 121 (2) (a) of the Act which reads as follows: -

***"s.121 (2) A tenderer may submit a complaint or dispute directly to the Appeals Authority if-***

***(a) the accounting officer has not given a decision within the time prescribed under this Act, provided that a complaint or dispute is submitted within five working days after expiry of the period within which the accounting officer ought to have made a decision".***

[Emphasis added]

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The provision outlines circumstances under which a tenderer aggrieved by a procuring entity's decision may submit a complaint or dispute directly to the Appeals Authority. One of such circumstances arises when a procuring entity fails to issue a decision within the timeframe prescribed by the Act, provided the complaint is submitted within five working days after the expiry of the period during which the accounting officer was required to decide.

In this appeal, the appellant being dissatisfied with the reasons for its disqualification submitted an application for administrative review on the 25<sup>th</sup> of November 2025. The respondent did not reply within the prescribed period. Consequently, on the 27<sup>th</sup> of November 2025, the appellant filed this appeal before the Appeals Authority in accordance with section 121(2) (a) of the Act.

We find the respondent's failure to respond to the appellant's complaint was improper in law. Nonetheless, the appellant exercised its statutory right by filing the present appeal before the Appeals Authority. Therefore, the appellant's rights were not prejudiced, as the appeal was properly filed and its grievances have been fully addressed through these proceedings.

Based on the above findings, we conclude the first issue in the affirmative, that the disqualification of the appellant's tender was justified.

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

Having considered the findings on the first issue, the Appeals Authority hereby partly dismisses the appeal to the extent that the appellant's disqualification was justified, and partly allows the appeal regarding the award of the tender to the proposed awardee, which was not justified. The

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respondent is hereby ordered to re-start the tender process in full compliance with the law. We make no order as to costs.

**It is so ordered.**

This decision is binding and enforceable under section 121(7) of the Act.

The parties have been informed of their right to Judicial Review pursuant to section 125 of the Act.

This decision is delivered in the presence of the parties on this 18<sup>th</sup> day of December 2025.

**HON. JUDGE (rtd) AWADH BAWAZIR**



**CHAIRPERSON**

**MEMBERS: -**

1. **ENG. LAZARO LOSHILAARI** ..... 

2. **MS. SARAH BISANDA** ..... 