

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 21 OF 2025-2026

BETWEEN

M/S ABBOTT RAPID DX INTERNATIONAL LTD..... APPELLANT

AND

MEDICAL STORES DEPARTMENT.....RESPONDENT

M/S PREMIER MEDICAL CORPORATION

PRIVATE LTD INTERESTED PARTY

RULING

CORAM

- | | |
|-----------------------------------|---------------|
| 1. Hon. Judge (rtd) Awadh Bawazir | - Chairperson |
| 2. Dr. William Kazungu | - 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

- | | |
|----------------------------|----------------------------------|
| 1. Mr. Aliko Mwamanenge | - Advocate - Bravehill Attorneys |
| 2. Ms. Hildegalda Mng'anya | - Country Manager -Tanzania |
| 3. Ms. Mary Katwaza | - Bahari Pharmacy Ltd |



FOR THE RESPONDENT

- | | |
|--------------------------|---|
| 1. Mr. Ayoub Sanga | - Senior State Attorney - Office of the Solicitor General (OSG) |
| 2. Mr. Brighton Mtugani | - Senior Legal Officer - Medical Stores Department (MSD) |
| 3. Mr. Omary Ngatanda | - State Attorney - OSG |
| 4. Mr. Erasto Baluwa | - State Attorney - OSG |
| 5. Ms. Lightness Makundi | - Ag. Manager - Procurement and Evaluation Negotiation |
| 6. Ms Sarah Madale | - Legal Officer - MSD |
| 7. Mr. Dioniz Misalaba | - Pharmacist - MSD |

FOR THE INTERESTED PARTY

- | | |
|----------------------|----------------------------------|
| 1. Mr. Ally Hamimu | - Country Representative |
| 2. Mr. Yahya Njama | - Advocate |
| 3. Mr. Twaha Taslima | - Advocate - Taslima Law Chamber |
| 4. Mr. Mashaka Ngole | - Ngole & Associate Law Chamber |

This appeal, lodged by M/s Abbott Rapid Dx International Ltd (hereinafter referred to as **"the appellant"**) against Medical Stores Department, abbreviated as **"MSD"** (hereinafter referred to as **"the respondent"**) pertains to tender No. FA/2024/2025/137/TR177/G/158 for the Supply of Malaria Rapid Diagnostic Kits from Manufacturers (hereinafter referred to as **"the tender"**).

Upon becoming aware of this appeal, **M/s Premier Medical Corporation Private Ltd** (hereinafter referred to as **"the interested party"**) joined the proceedings pursuant to regulation 16 of the Public Procurement Appeals Regulations, GN No. 65 of 2025.



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 Restricted International 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 28th May 2025, the respondent through the National e-Procurement System of Tanzania (**NeST**) invited eligible tenderers to participate in the tender, setting the submission deadline for 13th June 2025. By the deadline, eight tenders, including the appellant's, were received and evaluated. Subsequently, award was proposed to M/s Sirin Diagnostics at a unit price of USD 4.75, VAT exclusive.

The record of appeal indicates that the appellant successfully challenged the proposed award to M/s Sirin Diagnostics by applying for administrative review to the respondent on the ground that the latter was not prequalified by the World Health Organization (WHO-PQ), as required by the tender document. After reviewing the complaint, the respondent nullified the award to M/s Sirin Diagnostics and instead issued it to the appellant at a unit price of USD 6.5.

Dissatisfied with the respondent's decision to award the tender to the appellant, the interested party applied for administrative review and subsequently filed Appeal Case No. 9 of 2025-26 before the Appeals Authority. The appeal was based on the ground that the appellant was neither prequalified by the WHO-PQ nor registered by the Tanzania



Medicine and Medical Devices Authority (TMDA), as stipulated in the tender document. After hearing the parties, the Appeals Authority upheld the appeal and ordered the respondent to award the tender to the next lowest evaluated tenderer in compliance with the law.

In observance of the Appeals Authority's decision, on 16th December 2025, the respondent issued a notice of intention to award the tender to the interested party at a unit price of USD 6.5. The notice also informed the appellant that it was not considered for award due to the change of the winning bidder.

Dissatisfied with the respondent's decision, on 18th December 2025, the appellant applied for administrative review. On 23rd December 2025, the respondent dismissed the appellant's application. Further Aggrieved, on 29th December 2025, the appellant filed this appeal to the Appeals Authority.

Upon notification of the appeal, the respondent submitted its statement of reply, containing three Preliminary Objections (POs) on points of law to wit: -

- i) The appeal is bad in law for being *res judicata* - already conclusively determined by the Appeals Authority.**
- ii) The Appeals Authority lacks jurisdiction to re-hear its own previous decision through a fresh appeal.**
- iii) The appeal constitutes an abuse of process.**

When the matter was called on for hearing and before the issues were framed, Mr. Ayoub Sanga, Senior State Attorney from the OSG, prayed

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to withdraw the raised PO. The appellant did not object to the prayer. The interested party on its part also withdrew legal points contained in its statement of joining the appeal, as they raised the same issues as the respondent's PO.

In light of this development, the following issues were framed, namely: -

1.0 Whether award of the tender to the interested party was justified and in accordance with the law.

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

SUBMISSIONS BY THE APPELLANT

The appellant's submissions were made by Mr. Aliko Mwamanenge, learned advocate. He explained that this appeal emanated from the respondent's notice of intention to award the tender to the interested party, issued on 16th December 2025. After receiving the notice, the appellant being dissatisfied with the proposed award, argued that the interested party did not submit proof of being pre-qualified by WHO and TMDA registration certificates, as required by the tender document. Consequently, the appellant submitted a complaint with the respondent and subsequently filed this appeal.

Mr. Mwamanenge submitted that before the award was proposed to the interested party, it had been awarded to the appellant. However, the award was nullified on the ground that it was neither WHO- PQ nor registered with the TMDA, both mandatory requirements in the tender document. He noted that although the tender document required tenderers to be WHO -PQ and TMDA-registered, NeST did not provide a slot for uploading these certificates. Tenderers sought clarification and



the respondent replied that they would be contacted during the evaluation stage to submit the necessary documents.

He argued that the respondent never required tenderers to submit proof of the said certificates as earlier notified. The evaluation proceeded, culminating in a proposed award to M/s Sirin Diagnostics. Since the award to M/s Sirin Diagnostics was challenged on the same grounds that led the nullification of the appellant's award to wit; lack of WHO- PQ and TMDA registration, it is evident that the interested party also failed to meet these criteria.

Mr. Mwamanenge further explained that, through a letter dated 16th September 2025 sent via email, the respondent requested tenderers to submit their WHO -PQ and TMDA's registration certificates. Upon reviewing this correspondence, the appellant discovered that the interested party's email address was incorrectly recorded, as established by this Appeals Authority in ***M/S premier Medical Corporation Private Limited v. Medical Stores Department***, Appeal Case No. 9 of 2025-26. The counsel stated that the interested party did not receive the respondent's request and consequently failed to submit the required documents.

He emphasized that the interested party's notice of joining in this appeal did not provide proof of having submitted the required certificates to the respondent. And, similarly, the respondent has not indicated receipt of any such proof from the interested party.

Mr. Mwamanenge submitted that since none of the tenderers submitted proof of WHO- PQ and TMDA registration, the respondent should have disqualified all of them for being non-responsive pursuant to section 87



of the Act and regulation 213 of the Regulations. He averred that these provisions mandate that tender evaluation be conducted strictly in accordance with the tender document requirements without recourse to extrinsic evidence. Since no tenderer submitted the required certificates at the time of tender submission, the respondent was obliged to disqualify them rather than deeming some responsive based on documents submitted after the deadline, if any were submitted at all.

He referred to PPAA Appeal Case No. 9 of 2025-26 (supra), where the Appeals Authority nullified award to the appellant for failure to comply with WHO-PQ and TMDA registration requirements. He urged the Appeals Authority to reach the same conclusion in this appeal, as the interested party likewise failed to meet these criteria.

Finally, he prayed for the following orders: -

- i. Suspension of the proposed award of the tender to the interested party.
- ii. Prohibit the respondent from proceeding with award of the tender through unlawful procedures.
- iii. Reinstate the appellant into the tender process as it complied with the requirements of the tender document.

REPLY BY THE RESPONDENT

The respondent's reply submissions were made by Mr. Ayoub Sanga, learned Senior State Attorney. He adopted the Statement of Reply as part of his submissions. He stated that section 87 of the Act and regulation 213 of the Regulations require tender evaluations to be conducted strictly basing on the contents of tender documents and

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tenders submitted, without recourse to extrinsic evidence. This legal position was clearly interpreted and affirmed by the Appeals Authority in Appeal Case No. 9 of 2025–26 (*supra*).

Mr. Sanga submitted that clause 12.4 of the Instructions to Tenderers (ITT), as modified by clause 8 of the Tender Data Sheet (TDS) and Item 1 of the Schedule of Requirements, required tenderers to submit proof of WHO- PQ and registration with TMDA. He admitted that although the tender document explicitly imposed this requirement, NeST did not provide a slot for uploading the required certificates.

He stated that on 31st May 2025, tenderers sought clarification from the respondent regarding the absence of a specific slot for uploading WHO- PQ and TMDA registration certificates. In response, on 13th June 2025, the respondent informed tenderers that they would be contacted during the evaluation stage to submit the required documents. However, no tenderers were subsequently contacted.

Mr. Sanga submitted that after completing the evaluation process, the respondent issued a notification of award indicating its intention to award the tender to M/s Sirin Diagnostics. This decision was challenged by the appellant through a complaint filed to the respondent. Upon review, the respondent reversed its decision and issued a new notice of intention to award the tender to the appellant.

Following this, the interested party was dissatisfied and submitted a complaint to the respondent. After reviewing the complaint, on 9th September 2025, the respondent decided to re-evaluate the tenders. Consequently, on 16th September 2025, the respondent issued a letter requesting tenderers to submit their WHO- PQ and TMDA registration

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certificates. Mr. Sanga admitted that although the letter was sent via email, the respondent mistakenly used the email address vnkran@premiermedcorp.com instead of matt@premiermedcorp.com for the interested party. Therefore, it is certain that the interested party did not receive the request.

He further elaborated that before the re-evaluation was done, the appellant filed Appeal Case No. 9 of 2025–26 before this Appeals Authority. He emphasized that the WHO-PQ and TMDA registration certificates were crucial documents for this tender. Since these were not submitted and evaluated by the respondent, proceeding with the award would be improper and contrary to the law. He added that even if the requested documents had been submitted after the deadline, considering them would amount to relying on extrinsic documents, which is unlawful.

In support of his submissions, Mr. Sanga cited ***M/s Aroche Systecs & Investico Ltd versus Tanzania Airports Authority, PPAA Appeal Case No. 35 of 2021-22*** at page 20, whereby this Appeals Authority found that the respondent erred in law by intending to award a tender to a tenderer which failed to comply with the tender requirements.

He also cited ***M/s Simba Logistic Equipment Supply Ltd versus Tanzania - Zambia Railway Authority, PPAA Appeal Case No. 5 of 2023/2024***, which emphasized the principle that a tender process infected with procedural defects should not result in an unlawful award.

In light of these authorities and several others, Mr. Sanga prayed for nullification of the tender process in accordance with section 121(4) of



the Act, on the grounds that the evaluation was marred by irregularities and conducted in violation of the law.

Mr. Sanga further informed the Appeals Authority that the rainy season is approaching, in which the mosquito population explodes causing a rise in malaria cases. Therefore, re-advertisement of the tender is essential to ensure that malaria diagnostic kits are supplied by a tenderer selected in accordance with the legal requirements.

He concluded by stating that the decision to award the tender to the interested party was made in compliance with directives issued by this Appeals Authority in PPAA Appeal Case No. 9 of 2025-26. The respondent had no legal right to depart from those directives or to conduct a re-evaluation outside the prescribed framework. Accordingly, it proceeded to recommend award of the tender to the interested party.

In view of the above submissions, Mr. Sanga prayed for the following orders:

- i. Nullification of award proposed to the interested party as it did not comply with the requirements of the tender document.
- ii. The tender be re-advertised.
- iii. Any other order, the Appeals Authority may deem fit and just to grant.

REPLY BY THE INTERESTED PARTY

The interested party's submissions were made by Mr. Yahya Njama, learned advocate, assisted by Mr. Ally Hamimu, Country Representative. Mr. Njama commenced by noting that the tender document explicitly required tenderers to submit proof of their WHO -PQ and TMDA



registration certificates by the tender submission deadline. However, NeST did not provide a slot for uploading these certificates.

He submitted that, before the tender submission deadline, the interested party observed the absence of such a slot in NeST and on 31st May 2025 sought clarification from the respondent. On 13th June 2025, the respondent replied, informing the tenderers that they would be contacted during evaluation to submit the required documents. Despite this, the respondent never formally requested the certificates.

Mr. Njama argued that since the respondent's clarification was not followed by any formal request, it effectively modified the tender document by rendering the WHO-PQ and TMDA certificates irrelevant to the tender. He maintained that the clarification was binding on all tenderers and that the obligation to submit these documents would only arise if the respondent issued a formal request.

He further rebutted the appellant and respondent's claim that the tender award to the interested party should be nullified for failure to submit WHO-PQ and TMDA registration certificates. He contended that these arguments lack legal basis because no formal request for the documents was made. In the absence of such a request, the certificates were not required for this tender. Therefore, he submitted that section 87 of the Act and regulation 213 of the Regulations, relied upon by the appellant and the respondent, are inapplicable in this appeal.

Mr. Njama also submitted that it would be improper for the respondent to seek cancellation of the tender due to the tenderers' failure to submit WHO-PQ and TMDA registration certificates when the fault lies solely with the respondent's failure to request the document timely. Accepting

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such a prayer would unfairly penalize tenderers for the respondent's own procedural errors.

He further rebutted the respondent's argument that re-advertisement of the tender is necessary due to the impending rainy season and an imminent rise in malaria cases. He asserted that, for public health and efficiency reasons, the award proposed to the interested party should proceed. Re-advertising the tender would cause unnecessary government expenditure and delay the supply of critical malaria diagnostic kits.

In turn, Mr. Hamimu added that the respondent used an incorrect email address (vnkran@premiermedcorp.com) to request submission of WHO-PQ and TMDA registration certificates, an address never used by the interested party for tender correspondences. This issue was previously discussed in PPAA Appeal Case No. 9 of 2025-26 (supra), yet the respondent persisted in using the wrong email. He argued that this conduct indicates ill motive to disqualify the interested party and favour another tenderer.

Mr. Hamimu was also surprised on how the appellant knew the interested party had not submitted WHO-PQ and TMDA registration certificates. He pointed out that documents submitted by tenderers are confidential under section 48(1) and (2) of the Act, and a tenderer is not entitled to access qualification information of competitors. Thus, he questioned how the appellant obtained such information.

Mr. Njama concluded his submissions by praying for the following reliefs: -



- i. Award proposed to the interested party should be allowed to proceed.
- ii. Dismissal of the appeal.
- iii. The appellant be ordered to bear costs of this appeal.

REJOINDER BY THE APPELLANT

In his brief rejoinder, learned counsel for the appellant submitted that the clarification issued by the respondent did not modify the requirements of the tender document. Tenderers were still obligated to submit the WHO-PQ and TMDA registration certificates. The clarification merely extended the deadline for submission without altering the mandatory nature of the tender requirement.

Regarding use of the wrong e-mail address, the learned counsel argued that by the time the respondent's letter requesting submission of WHO-PQ and TMDA registration certificates were issued, the Appeals Authority had not yet issued its decision clarifying ambiguities related to the interested party's email address. Therefore, there was no ill motive on the respondent's part.

Concerning confidentiality, the learned counsel maintained that all the information relied upon was publicly accessible by the appellant, as evidenced by the record of appeal. Consequently, section 48(1) and (2) of the Act was not breached, contrary to the interested party's allegation.

He concluded by reiterating his prayer that the tender process be nullified for being conducted in contravention of the law.

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REJOINDER BY THE RESPONDENT

Mr. Sanga rejoined by adopting his earlier submissions and clarified that the requirement for WHO-PQ and TMDA registration certificates remained valid. He explained that the request for such documents was only triggered during a re-evaluation ordered by the respondent's Accounting Officer following the interested party's application for administrative review. The respondent later realized that the interested party had filed Appeal Case No. 9 of 2025-26, which prevented the re-evaluation from proceeding. Consequently, the respondent awaited the decision of the Appeals Authority, which directed that the award be made to the lowest evaluated tenderer.

He further stated that since it was established that none of the tenderers complied with WHO-PQ and TMDA registration requirements, the respondent could not lawfully award the tender to a non responsive tenderer. He therefore maintained that re-tendering is the only lawful remedy, as proceeding with the defective tender would be contravening the law.

Before considering the merits of the matter, the Appeals Authority observed from the record of appeal that there were points of law requiring clarification from the parties. These points related to: -

- (i) The validity period of the tender.
- (ii) The clarification sought by tenderers regarding submission of WHO-PQ and TMDA registration certificates and the respondent's response thereto.



In view of this, the parties were recalled to appear before the Appeals Authority on 21st January 2025. On the date, the parties appeared and the following issues were framed namely: -

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

2.0 Whether the respondent's response on the clarification sought by the interested party complied with the requirements of the law.

SUBMISSIONS BY THE APPELLANT ON THE POINTS OF LAW

Mr. Mwamanenge addressed the first point of law by stating that the tender validity period specified for this tender was 120 days from the tender opening date of 13th June 2025. He noted that on 26th September 2025, the appellant received a letter from the respondent requesting a 90 day extension of the tender validity period, from 12th October 2025 to 10th January 2026. The appellant accepted the request and duly extended the tender validity period as required.

He further submitted that on 7th January 2026, the appellant received a second request for a further 60 day extension of time from the respondent, from 11th January to 12th March 2026. On 8th January 2026, the appellant accepted this additional request and extended the bid securing declaration accordingly.

On the second point of law, Mr. Mwamanenge stated that on 31st May 2025, one of the tenderers sought clarification from the respondent regarding submission of the WHO-PQ and TMDA registration certificates, noting that there was no slot in NeST. The respondent replied through a clarification issued on 13th June 2025, informing tenderers that they



would be notified during evaluation to submit the required documents. However, this response was issued beyond the timeframe stipulated under clause 8.1 of the ITT and regulation 12(2) of the Regulations. Therefore, the response was issued out of time given under the law.

SUBMISSIONS BY THE RESPONDENT ON THE POINTS OF LAW

Mr. Sanga addressed the first point of law by stating that the tender validity period is guided by section 86 of the Act and regulation 200 of the Regulations. These provisions require the specified validity period be sufficient to complete the evaluation process, obtain Tender Board approval, and sign the contract. He noted that clause 17.1 of the ITT, as modified by clause 11 of the TDS, clearly specified that the tender validity period for the tender was 120 days from the deadline for submission of tenders.

He explained that the tender opening was on 13th June 2025, counting from that date, the 120-days validity period expired on 11th October 2025. However, before expiry, on 26th September 2025, the respondent requested tenderers to extend the validity period for a further 90-day period, starting from 12th October 2025 to 10th January 2026.

He elaborated that this extension request was sent to only two tenderers, the appellant and the interested party who were the only remaining bidders at the financial evaluation stage. Of these, only the appellant accepted the request for extension. He submitted that the interested party could not accept the request because it was sent to an incorrect email address vnkran@premiermedcorp.com. He acknowledged that the respondent was aware of the findings in PPAA Appeal Case No. 9 of 2025-26 regarding the incorrect email but



nevertheless repeated the mistake by sending the request to the wrong email.

Regarding the second extension request, Mr. Sanga submitted that it was sent on 7th January 2026 to both the appellant and the interested party, this time using the correct email address for the interested party. The requested extension was for 60-days, from 11th January 2026 to 12th March 2026, and both tenderers accepted the request.

He further stated that under section 86 of the Act and regulation 200 of the Regulations, both procuring entities and tenderers must comply with the tender validity period specified in the tender document. He submitted that this legal position has been emphasised by this Appeals Authority in several decisions, including ***Nandhra Engineering & Construction Company Ltd v Ministry of Education, Science and Technology and Another, PPAA Appeal Case No. 27 of 2020- 21,*** and ***M/S SGS Tanzania Superintendence Co. Ltd v Tanzania Bureau of Standards, PPAA Appeal Case No. 25 of 2021-22,*** wherein the mandatory compliance of the bid validity period and consequences of non-compliance were amply emphasized.

Mr. Sanga submitted that according to the record of appeal, five tenderers reached the financial evaluation stage. Since one tenderer was found unsuccessful, the extension request should have been sent to all four remaining tenderers. However, the first request was sent to only one tenderer due to the incorrect email address for the interested party, and the second request was sent to only two tenderers. Additionally, both extensions requested totalled 150-days, exceeding the initially stipulated 120-days validity period, thus contravening the law.

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He argued that because the extension was granted in violation of the law, it should be treated as if it was never made, meaning the tender validity had already expired.

Regarding the second point of law, Mr. Sanga submitted that clause 8.1 of the ITT and regulation 12(1) (a) and (b) and (2) of the Regulations provide the timeframe within which a tenderer may seek clarification, and the procuring entity's response. He explained that the interested party sought clarification on 31st May 2025. Although NeST indicates the respondent's reply was issued on 13th June 2025, Mr. Sanga insisted that the system would not have allowed a response if it had been issued beyond the prescribed time. However, he conceded that if the system did permit a late response, such an action would have contravened the requirements of regulation 12(2) of the Regulations, which requires a procuring entity to respond within two working days of receiving a clarification request.

SUBMISSIONS BY THE INTERESTED PARTY ON THE POINTS OF LAW

Mr. Hamimu addressed the first point of law by acknowledging that the tender validity period specified for this tender was 120-days. He noted that the respondent claimed to have requested the appellant and the interested party to extend the tender validity period. However, the interested party did not receive the request because, as the respondent correctly pointed out, it was sent to an incorrect email address.

He submitted that the respondent deliberately sent correspondences related to this tender to the email address vnkrani@premiermedcorp.com, which did not belong to the person



vested with powers of attorney. Mr. Hamimu emphasized that the respondent has persistently used the wrong email address when dealing with the interested party's tenders. He also cited PPAA Appeal Case No. 7 of 2022-23, between the interested party and the respondent, where the issue of an incorrect email address was raised and it was found that the respondent used an email address not designated for tender communication.

Mr. Hamimu further argued that the respondent had the correct email address of the person authorized by the power of attorney but chose to use an incorrect one not specifically provided by the interested party for this tender. This conduct, he submitted, indicates an intention by the respondent to exclude the interested party from receiving important tender-related communication.

He elaborated that the respondent was not required to seek an extension of the bid validity period while an appeal was pending before the Appeals Authority. The interested party filed PPAA Appeal Case No. 9 of 2025-26 on 17th September 2025, and from that date, the tender validity was effectively suspended until the decision was issued. It was his view that the tender validity period did not expire on 11th October 2025, but rather around November 2025.

On his part, Mr. Njama, submitted that had the first request for extension of the bid validity period been sent to the correct e-mail address to wit bsave@premiermedcorp.com, which belongs to a person holding an issued power of attorney, it would have undoubtedly been received by the interested party. He argued that the respondent's failure to use the correct email address as provided in NeST should not



prejudice the interested party's rights. Had the respondent sent the first extension request to the correct email address as was done with the second request, the interested party would have accepted it timely.

Mr. Njama contended that the respondent has a duty to treat all tenderers equally throughout the tender process. The selective issuance of extension request demonstrates unfair treatment of tenderers in the disputed tender. He urged the Appeals Authority to order the respondent to treat all tenderers equally. He further argued that nullifying the tender process would not remedy the observed flaws but instead increase government costs and delay supply of the required goods.

On the second point of law, Mr. Njama submitted that the interested party sought clarification within time on 31st May 2025. The respondent issued its clarification on 13th June 2025. He noted that, practically, it is not possible for the clarification to be issued within two days as required by regulation 12(2) of the Regulations. However, despite the delays, the late issuance of the clarification did not prejudice the tenderers' rights in this tender. Consequently, tenderers should not be condemned for the respondent's mistakes.

REJOINDER BY THE APPELLANT ON THE POINTS OF LAW

On his brief rejoinder, Mr. Mwamanenge submitted that the appropriate remedy for this tender is re-advertisement to address and rectify all observed procedural irregularities. He argued that allowing the tender to proceed under current circumstances would prejudice the rights of other tenderers entitled to equal consideration. Therefore, he emphasized that the proper remedy is the nullification of the entire



tender process, and the respondent should be directed to re-advertise it under a new tender number to ensure transparency, fairness, and equal participation by all eligible tenderers.

REJOINDER BY THE RESPONDENT ON THE POINTS OF LAW

Mr. Sanga briefly rejoined that the interested party raised matters relating to merits of the appeal, which should not be included in the arguments concerning the points of law raised by the Appeals Authority. Regarding the incorrect email address, he submitted that in Appeal Case No. 9 of 2025–26, the interested party claimed its correct email address in NeST was matt@premiermedcorp.com; however, upon verification, the NeST system showed bsave@premiermedcorp.com as the registered address, revealing inconsistency in the interested party's position. He argued that the interested party should clearly identify the correct email address for official communication.

Mr. Sanga further emphasized that the respondent acted in good faith. After receiving no response to the first extension request, the respondent sent a second request to matt@premiermedcorp.com, which was received and responded to by the interested party, demonstrating the respondent's good faith in conducting the tender process.

He further clarified that the bid validity period does not automatically suspend after filing an appeal before the Appeals Authority contrary to the interested party's argument. If the tender validity period is about to expire, the proper course is to request tenderers to extend the tender validity period, but not beyond the initially specified duration, pursuant to regulation 200(6) of the Regulations. He argued that since the extended validity period exceeded 120-days, which contravenes the law,

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the only lawful remedy is to nullify the tender and re-advertise it in compliance with the law.

Regarding the second point of law, Mr. Sanga submitted that if the evidence confirms that the respondent's responses to tenderers' clarifications requests were issued outside the timelines prescribed under regulation 12(2) of the Regulations, then those responses should be declared invalid as they were issued in contravention of the law.

ANALYSIS BY THE APPEALS AUTHORITY ON THE POINTS OF LAW

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

In considering this point of law, we examined section 86 of the Act which reads:

"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".

(Emphasis supplied)

In terms of the provision, procuring entities are required to specify a validity period in the tender document sufficient to complete the evaluation process, obtain Tender Board approval, and sign the contract.



Tenderers must maintain the validity of their tenders for the period specified in the tender documents.

We reviewed clause 17.1 of the ITT together with clause 12 of the TDS and noted that the tender validity period was 120-days from the deadline for submission of tenders. The record of appeal indicates that the deadline for submission was 13th June 2025, with tenders opened on the same day. Counting from 13th June 2025, the 120-days bid validity period expired on 11th October 2025.

Additionally, we reviewed regulation 200(4), (6) and (7) of the Regulations, which reads as follows: -

"r.200 (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 contracts signing but shall not exceed one hundred and twenty days from the final date fixed for submission of tenders.

*(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 sub regulation (6) without forfeiting its tender



security and the effectiveness of its tender shall be terminated upon the expiry of the unextended period of effectiveness."

(Emphasis supplied)

The provisions stipulate that, in exceptional circumstances, a procuring entity may request tenderers to extend the bid validity period, provided that such a request is made before the expiry of the initially specified period. The tenderer has the option to accept or reject such a request. If a tenderer declines to extend the bid validity, its tender expires at the end of the original validity period.

The record indicates that before the initial bid validity period expired, the respondent sent an email on 26th September 2025, requesting a 90-day extension of the bid validity, that is from 12th October 2025 to 10th January 2026. This request was sent to both the appellant and the interested party. However, the e-mail sent to the interested party was addressed to an incorrect e-mail vnkrani@premiermedcorp.com, a fact admitted by the respondent. The email to the appellant was sent to hildegalda.mnganya@abbott.com, which both parties agree is the correct email address.

We further observed that the interested party did not accept the first extension request because it was sent to an unrecognized email address not designated for tender communication. Conversely, the appellant accepted the extension in a letter dated 30th September 2025.

The record of appeal indicates that at the time of the first extension request, only four tenderers remained, as other four had already been notified of their unsuccessful bids. During the hearing, the respondent



conceded that the request for extension was correctly sent only to the appellant, since the interested party's email address was incorrect and two other tenderers were not contacted.

Applying regulation 200(6) of the Regulations to these facts, the respondent erred in law by discriminating tenderers when requesting for an extension. The regulation requires all tenderers participating in the tender to be requested to extend the validity period. Since four tenderers remained, the respondent was obliged to send the extension request to all four. By sending it only to the appellant, the respondent caused the tenders of the other three remaining tenderers to expire at the end of the original validity period.

Based on the law and facts, the respondent's first request for extension was unlawful because it failed to include all remaining tenderers. As a result, the request is treated as if it was never made, and the tender expired on 11th October 2025, when the original 120-day validity period ended.

We further observed that the respondent sent a second extension request on 7th January 2026, seeking a 60-day extension, which was sent to both the appellant and the interested party at multiple email addresses bsave@premiermedcorp.com, marc@premiermedcorp.com, mk@premiermedcorp.com and pr@hfcgroup-inc.com. Both parties accepted the requests. However, since the tender had already expired, the second extension request was improper, particularly for the interested party, whose tender had already expired due to the first request's invalidity.

Three handwritten marks in blue ink are located at the bottom left of the page. From left to right, they appear to be a stylized signature, a checkmark, and another signature or set of initials.

Regulation 200(6) of the Regulations also requires extension of the tender validity period to not exceed the original validity period specified in the tender. In this case, the initial validity was 120 days, but the respondent issued two extension requests totalling 150-days being 90 and 60 days respectively. This exceeds the original validity period, rendering the extensions invalid under the law.

The interested party argued that the validity period should pause during an appeal before the Appeals Authority. We observed that, the law governing procurement process is silent on this issue.

The interested party also opposed the respondent's prayer to re-advertise the tender, suggesting instead that the tender be reinstated and the respondent be ordered to rectify the anomalies, including ensuring equal treatment of tenderers. However, the principle of equality presupposes lawful conduct and does not justify excusing non-compliance with mandatory legal requirements. Retrospectively reviving an expired tender would exacerbate the illegality and contravene the law. Thus, the interested party's argument on this point is rejected.

Since the tender validity period had expired, all subsequent actions by the respondent - including issuance of the notice of intention to award the tender to the interested party, the complaint submitted by the appellant and subsequently this appeal are all null and void in law.

Under these circumstances we find that there is no valid tender for determination by the Appeals Authority. This issue has been answered in the negative.



Given this finding, the Appeals Authority would not delve into the remaining issues as the appeal is premised under the expired tender.

In obiter, several irregularities in the disputed tender were noted and should be addressed in future tenders. These irregularities include: -

- i) The requests for clarification of tenders were issued in contravention of regulation 12(2) of the Regulations and Clause 8.2 of the ITT. Regulation 12(2) of the Regulations requires that clarifications be issued within two days, while clause 8.2 of the ITT requires clarification to be issued within one to three days. In this tender, clarification was sought on 31st May 2025 by the interested party but the respondent replied on 13th June 2025, after a delay of 13 days. In essence, as the respondent did not provide a slot for submission of these critical documents in the tender, it had the obligation to request tenderers to submit the documents through alternative means. It did not do so until reminded by the interested party's 31st May 2025 clarification. Even after this, it was wrong for the respondent to request the same during the evaluation as documents should be submitted by tenderers by the tender submission deadline. It was therefore improper for the respondent to inform tenderers that they would be contacted during the evaluation stage to submit the outstanding documents. In addition, if a clarification leads to an amendment of the tender documents, then all tenderers must be informed of such changes.
- ii) Extension of the bid validity period was conducted in contravention of the law, as pointed out in the analysis herein.



- iii) Evaluation of the tenders was carried out in contravention of section 87 of the Act and regulations 210, 211, 212 and 213 of the Regulations. During evaluation, the respondent failed to adhere to requirements set out in the tender document and tenders submitted by tenderers particularly the requirement to submit the WHO -PQ and TDMA registration certificates. In PPAA Appeal Case Number 9 of 2025-26 regarding the same tender, the respondent failed to comply with this requirement leading to a re-evaluation of this particular criteria and a second re-evaluation which we rejected and ordered an award to the lowest evaluated tenderer. Had the respondent exercised due diligence, it would have realised that tenderers had not submitted WHO-PQ and TMDA registration certificates, which were critical documents in the tender. The respondent could not lawfully proceed to award the tender without verifying existence of those certificates. This omission led to changes of the winners in this tender and unnecessarily prolonged the tender process, as unsuccessful tenderers repeatedly challenged the awards on the basis of non-submission of WHO-PQ and TMDA registration certificates.
- iv) The respondent's repeated use of incorrect email addresses of the interested party has been noted. This issue arose in multiple cases, including PPAA Appeal Case No. 7 of 2022-23 and PPAA Appeal Case No. 9 of 2025-26 where we clarified the matter and instructed the respondent to use the proper and correct e-mail address of the interested party. However, the respondent persisted in sending important e-mails to wrong addressees.



In law, procurement proceedings, ought to be guided by fair procedure, transparency and equal treatment of all tenderers. The noted irregularities could be construed to contravene these principles and may lead to complaints of preference of tenderer(s). It is also important to emphasize that the principle of fair procedure and rules of natural justice have to be read into provisions of the procurement law.

Given the findings above that no valid tender exists for consideration; the appeal cannot be determined on the basis of a non-existing tender. Accordingly, we dismiss the appeal. Each party shall bear its own costs. It is so ordered.

This ruling 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 ruling is delivered in the physical and visual presence of the parties this 26th day of January 2026.

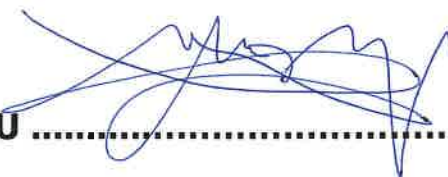
HON. JUDGE (rtd) AWADH BAWAZIR



.....
CHAIRPERSON

MEMBERS: -

1. DR. WILLIAM KAZUNGU



2. MS. FLORENTINA SUMAWE

