

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 22 OF 2025-26**

**BETWEEN**

**M/S ANHUI ZHENWEI CONSTRUCTION**

**CO. LIMITED .....APPELLANT**

**AND**

**PRESIDENT'S OFFICE, REGIONAL ADMINISTRATION**

**AND LOCAL GOVERNMENT..... RESPONDENT**

**DECISION**

**CORAM**

- |                                   |               |
|-----------------------------------|---------------|
| 1. Hon. (rtd) Judge 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. Violet S. Limilabo | - Senior Legal Officer |
| 3. Mr. Venance Mkonongo   | - Legal Officer        |

**FOR THE APPELLANT**

- |                         |                          |
|-------------------------|--------------------------|
| 1. Mr. Thadei Nzalalila | - Consultant             |
| 2. Mr. Frank Ngowi      | - Country Representative |



## FOR THE RESPONDENT

- |                        |  |
|------------------------|--|
| 1. Mr. Victor Ngole    | - Director of Procurement<br>Management Unit |
| 2. Mr. Jonhson Meela   | - Principal Legal Officer                    |
| 3. Mr. Issa Maganga    | - Engineer                                   |
| 4. Mr. Herry Mdong'ola | - Principal Procurement<br>Officer           |
| 5. Mr. Charles Adrian  | - Engineer                                   |
| 6. Mr. Nyariri Nanai   | - Sub Project Coordinator,<br>Msimbazi       |
| 7. Mr. Rabson Sailo    | - Senior Procurement<br>Officer              |

This appeal, lodged by **M/S Anhui Zhenwei Construction Co. Limited** (hereinafter referred to as "**the Appellant**") against **President's Office Regional Administration and Local Government**, abbreviated as **PO-RALG** (hereinafter referred to as "**the Respondent**"), concerns Tender No. ME56/WB-MBDP/P169425/2025/2026/W/01 for construction of a BRT Depot at Ubungu Maziwa and Demolition of an Existing Depot at Jangwani in Dar es salaam (hereinafter referred to as "**the tender**").

Based on 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 through the International Competitive Tendering method as prescribed by the Public Procurement Act, No. 10 of 2023 (hereinafter referred to as "**the Act**") and the Public Procurement

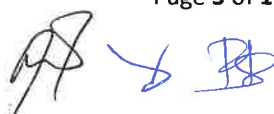


Regulations, GN. No. 518 of 2024 (hereinafter referred to as "**the Regulations**").

On 15<sup>th</sup> September 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 20<sup>th</sup> October 2025. By the deadline, ten tenders, including that of the appellant, were received and subjected to evaluation. Thereafter, award was proposed to M/S China Wu Yi Co. Ltd (hereinafter referred to as "**the proposed awardee**").

On 18<sup>th</sup> December 2025, the respondent, through NeST, issued a Notice of Intention to Award, informing the appellant that the respondent intended to award the tender to the proposed awardee at a contract price of Tanzania Shilings Thirty-Nine Billion Eight Hundred Ninety-One Million Two Hundred Fifty-Three Thousand Seventy-Eight and Seventy Cents (TZS 39,891,253,078.70), VAT exclusive, with a completion period of 455 days.

The Notice further stated that the appellant's tender was not considered for contract award due to failure to comply with the *access to the financial resources* and the *Sexual Exploitation and Abuse (SEA) and/or Sexual Harassment (SH) Performance Declaration* (hereinafter referred to as **SEA**) requirements. Specifically, in regard to the access to financial resources requirement, the appellant submitted three Bank Credit Certificates from two banks which were outdated, not addressed to the respondent, and did not specify the name or project number. Additionally, the SEA Form was signed by an unauthorized person.

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Dissatisfied with the reasons given for the disqualification, the appellant applied for administrative review to the respondent on 19<sup>th</sup> December 2025. The respondent rejected the appellant's application on 29<sup>th</sup> December 2025. Further aggrieved by this decision, the appellant lodged the present appeal before the Appeals Authority on 31<sup>st</sup> December 2025.

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

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

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

### **SUBMISSIONS BY THE APPELLANT**

The appellant's submissions were made by Mr. Thadei Nzalalila, Consultant. In addressing the first issue, he stated that the tender process must be conducted in accordance with the Act and its Regulations. He highlighted that Section 5 of the Act requires tender processes to ensure value for money, maximise integrity, competition, accountability, sustainability, efficiency and transparency. He argued that, in the disputed tender, the respondent failed to comply with these principles.

Mr. Nzalalila referred to page 45 of the tender document that contained a criterion for access to financial resources requiring tenderers to demonstrate access to funds amounting to TZS 9,328,000,000.00. To satisfy this requirement, the appellant attached three bank credit certificates from two banks. The first credit certificate, issued by the Bank of China, granted the appellant a credit line of CNY 90 million. The

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second credit certificate, from Industrial Bank Co Ltd, granted a credit limit of CYN 50 million. The third credit certificate, also from Industrial Bank Co Ltd, confirmed an account balance of RMB 30,000,000.00.

Mr. Nzalalila submitted that after converting these amounts - CNY 90 million, CNY 50 million and RMB 30 million- into United States Dollars (USD), it is approximately USD 17 million, exceeding the TZS 9,328,000,000.00 threshold specified in the tender document. Therefore, he argued, the appellant complied with the access to financial resources criterion.

He further stated that since the tender was opened on 20<sup>th</sup> October 2025, the credit certificates could not be dated after the tender opening date. They should have been issued before the deadline for submission of tenders. The appellant's certificates were indeed issued prior to the deadline, thus meeting the tender document's requirements.

Mr. Nzalalila added that the tender document did not prescribe a specific format of credit certificates – such as a requirement to be addressed to the procuring entity or mentioning the project name and tender number. It was his view that since the document was silent on these details, tenderers were free to submit any document demonstrating access to the required financial resources. Consequently, it was improper for the respondent to disqualify the appellant's tender on the grounds that the credit certificates were not addressed to it or lacked the project name and the tender number.

He also submitted that the respondent ignored clause 27.1 of the Instructions To Bidders (ITB) which permits it to seek clarifications from tenderers during evaluation. Instead of requesting clarification on the

credit certificates, the respondent proceeded to disqualify the appellant's tender without such inquiry.

Regarding the appellant's submission of updated credit certificates with the administrative review application, Mr. Nzalalila argued that these should have been treated as clarifications rather than substitutes for the already submitted documents. The respondent misinterpreted the updated certificates by wrongly considering them as new submissions, rather than a clarification.

On the issue of SEA, Mr. Nzalalila contended that neither the tender document nor the sample format in NeST required a handwritten signature. Moreover, the tender document did not specify that the Form must be signed by a person with a Power of Attorney. However, after being shown the sample SEA Declaration Form by the Appeals Authority, the appellant conceded to non-compliance with this requirement.

Mr. Nzalalila further submitted that the appellant's quotation offered a commercial discount of 4.5%, which was lower than the 4% discount offered by the proposed awardee. Instead of considering this more favorable offer, the respondent disqualified the appellant's tender based on subjective assumptions about the credit certificates. He argued that awarding the tender to the proposed awardee would result in loss of nearly 8.5% of the contract value (TZS 3.4 billion), taxpayers' money. He was of the view that awarding the contract to the appellant would save a substantial amount that could be allocated to other projects.

In conclusion, Mr. Nzalalila prayed for the following reliefs that:-


- i. The respondent be required to adhere to the World Bank procurement practices, uphold fairness and impartiality of the tender process.
- ii. The respondent be ordered to award the contract to the appellant.

### **REPLY BY THE RESPONDENT**

The respondent's submissions were made by Mr. Johnson Meela, Principal Legal Officer. He stated that the appellant's tender was disqualified at the commercial evaluation stage due to failure to comply with the access to financial resources criterion. He explained that the tender document required tenderers to demonstrate access to financial resources by submitting proof from any source amounting to TZS 9,328,000,000.00.

Mr. Meela went on to aver that the appellant submitted three bank credit certificates from two banks to meet this requirement. The first credit certificate was from Agricultural Bank of China, granting a credit line of CNY 90 million; the second was from Industrial Bank Co. Ltd (Hefei Branch) with a credit line of CNY 50 million, and the third was also from Industrial Bank Co. Ltd (Hefei Economic and Technological Development Zone, Science and Technology Sub-branch), confirming an account balance of RMB 30,000,000.00.

He submitted that during tender evaluation, the evaluation committee identified several anomalies in the attached appellant's bank credit certificates. For instance, the first certificate, granting CNY 90 million, was not addressed to the procuring entity and lacked the project name and the tender number. This made it difficult to verify whether the certificate was issued specifically for this tender.



Mr. Meela added that the certificate also lacked a reference number, details of bank information, and specific addresses that could have facilitated verification by the respondent. These omissions deprived the respondent's ability to authenticate the documents.

He further explained that the second credit certificate, indicating a credit of CNY 50 Million, contained similar anomalies. Additionally, it included a disclaimer stating it was neither a letter of guarantee nor a commitment letter. This disclaimer indicated that the bank did not provide an assurance of the availability of the specified credit, implying the appellant could not rely on this credit facility.

Regarding the third certificate, Mr. Meela stated it exhibited similar anomalies as the first credit certificate and was addressed to the Roads Authority of the Republic of Malawi, making it irrelevant to the tender under appeal.

He also pointed out that all three bank credit certificates were originally written in Chinese and were translated into English. However, the translated versions lacked official stamps and did not bear the address of an authorized translating institution. Consequently, he argued that the authenticity of the translated documents was questionable.

Addressing the appellant's argument that the tender document did not specify a format for credit certificates, Mr. Meela referred to clause 21.4 of the ITB, which requires bidders to ensure integrity, completeness and authenticity of their tenders before submission to the procuring entity. Contrary to this, the appellant addressed the two credit certificates to itself and one to the Roads Authority of the Republic of Malawi.



On the issue of the updated credit certificates submitted with the administrative review application, Mr. Meela cited clause 24.3 of the ITB which prohibits modification to tenders after the submission deadline. He argued that submitting updated documents during the administrative review amounted to an unauthorized amendment, contravening tender requirements.

Regarding the appellant's non-compliance with SEA, Mr. Meela noted that since the appellant conceded to this point, the respondent would not delve into it.

In conclusion, Mr. Meela submitted that the appellant's tender was fairly disqualified for failure to comply with the access to financial resources and SEA requirements. Therefore, he prayed for the dismissal of the appeal for lack of merits.

## **ANALYSIS BY THE APPEALS AUTHORITY**

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

In addressing this issue, we considered the parties' arguments. The appellant disputed its disqualification for failing to meet the access to financial resources requirement. It claimed compliance by submitting bank credit certificates demonstrating access to funds exceeding USD 17 million, which surpassed the TZS 9,328,000,000.00 threshold specified in the tender document.

Conversely, the respondent denied the appellant's compliance with this criterion. It argued that the submitted bank credit certificates were neither addressed to the respondent nor included the tender's name and number. Furthermore, one credit certificate was addressed to the Roads

Authority of the Republic of Malawi and another contained a bank disclaimer regarding the credit amount. Thus, the respondent maintained that the appellant failed to satisfy the tender requirement in this regard.

In determining the validity of the parties' contentious arguments, we reviewed Section III — Evaluation and Qualification Criteria, focusing on Item 3 (Financial Situation and Performance) - Access to Financial Resources which reads as follows:-

***"Access to Financial Resources (Sources of Fund)***  
***(SCORE: Comply/Not Comply to specified minimum requirements)***

*The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated stated for the subject contract(s) net of the Bidder's other commitments.*

<i>Average fund amount from all sources (any freely convertible currency proposed by bidder)</i>	<i>9328000000"</i>
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The provision clearly states that tenderers were required to demonstrate access to adequate financial resources sufficient to meet the estimated contract's cash flow requirements, with an average fund of TZS 9,328,000,000.

To determine whether the appellant complied with this criterion, we reviewed its tender submitted in NeST. We noted that, in the section



where tenderers were required to demonstrate access to financial resources, the appellant attached three bank credit certificates issued by two different banks.

The first credit certificate was issued by the Agricultural Bank of China (Feixi Baogong Road Sub-Branch). It indicated a total credit line granted to the appellant of CNY 90 Million. The certificate showed the appellant's credit status as active from 09<sup>th</sup> September 2022 to 25<sup>th</sup> September 2025. However, the credit period lapsed before the tender submission deadline of 20<sup>th</sup> October 2025. Additionally, the certificate was neither addressed to the respondent nor did it contain the name or number of the tender.

Given these facts, we find that since the specified credit facility had already lapsed, it cannot be considered available for this tender. In other words, no valid credit was demonstrated by this certificate. Furthermore, since the issuing bank addressed the certificate to the appellant without referencing the tender's name or number, it would have been difficult to verify whether the funds were intended solely for this tender, even if the credit had been active.

The second certificate was issued by the Industrial Bank Co. Ltd (Hefei Branch). It was addressed to the appellant and granted a credit line of CNY 50 million. However, the certificate included a disclaimer which reads as follows: -

***"This Certificate is neither a letter of guarantee nor a commitment letter and does not constitute any form of guarantee or commitment by Industrial Bank to the applicant of this Certificate. Any recipient of this document should exercise caution in their investment***



***or other commercial activities. Any investment or other commercial activities undertaken by any recipient based on the above description are unrelated to Industrial Bank, and they shall not use this Certificate to make any claims against Industrial Bank'.***

(Emphasis supplied)

The wording above indicates that the bank has excluded itself from the any liability arising from the contents of this certificate. It means the bank neither provided a commitment nor a guarantee for the specified credit amount. Consequently, there was no assurance regarding the availability of the credit funds. Additionally, similar to the first certificate, this certificate did not specify the name or number of the project for which it is intended.

The third certificate was issued by the Industrial Bank Co. Ltd (Hefei Economic and Technological Development Zone, Science and Technology Sub-branch). It was addressed to the "Roads Authority of the Republic of Malawi" and confirmed the appellant's account balance as RMB 30,000,000.00. This certificate also contained a disclaimer similar to the second credit certificate. Upon a thorough review, we find that this certificate was irrelevant to the tender in question since it was addressed to a different entity.

Regarding the appellant's argument that the tender document did not specify a format for demonstrating access to financial resources, it is clear that the purpose of this criterion is to assure the procuring entity that a tenderer has sufficient cash flow to cover project costs. Therefore, credit certificates or letters of comfort, must be addressed to



the procuring entity, and they must clearly identify the specific project name and number. This allows the procuring entity to verify the availability of funds. A credit certificate addressed solely to a tenderer, as in the appellant's case, cannot guarantee funds availability since it could be used as a commitment for multiple projects.

Accordingly, the name of the procuring entity, along with project name and number, are essential elements for credit certificates or letters of comfort.

We also reviewed regulations 210 (1) and 213 (1) and (2) of the Regulations which read as follows: -

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

***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 the deviation."***

(Emphasis supplied)

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In terms of these provisions, evaluation of tenders must be based solely on the terms and conditions set forth in the tender document and the tenders submitted by tenderers, without reference to extrinsic evidence. Moreover, if a tender fails to meet the criteria specified in the tender document, it must be rejected and cannot be rendered responsive through correction or withdrawal of the deviation.

Applying these provisions to the facts of this appeal, we note that all of the appellant's credit certificates failed to meet the tender requirements. Therefore, we find the respondent's decision to disqualify the appellant's tender was proper and fully compliant with regulation 213 (1) and (2) of the Regulations.

The appellant contended that it submitted updated credit certificates during its application for administrative review. However, regulation 213(1) of the Regulations explicitly prohibits the consideration of any documents other than those submitted by the tender submission deadline. Furthermore, the applicability of clause 27.1 of the ITB, as relied upon by the appellant, is subject to the discretion of the procuring entity. It may choose whether or not to seek clarification from a tenderer during the evaluation process. Therefore, it is not mandatory for the procuring entity to request clarifications and opting not to do so does not violate the requirements of the tender.

Additionally, the appellant's submission of updated credit certificates during the application for administrative review was improper, as documents submitted at this stage cannot be considered to alter the evaluation findings.

The appellant raised a concern that the proposed awardee's price was higher compared to its own by claiming to have offered a discount of

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4.5%, which is lower than the 4% offered by the proposed awardee. In response to this, the respondent clarified that the appellant was disqualified during the commercial evaluation stage and thus its tender was not considered in the financial evaluation.

To assess the validity of these arguments, we reviewed regulation 219 (a) of the Regulations which reads as follows:-

*"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 supplied)

The provision requires that a tender be awarded to the lowest evaluated tenderer for goods, works or services, or the highest evaluated tenderer in case of revenue collection; however, this does not necessarily mean awarding the lowest or highest submitted price. According to the evaluation report, the appellant's tender was disqualified during the commercial evaluation stage due to non-compliance with the access to financial resources and SEA requirements. As a result, the appellant's tender did not proceed to the financial evaluation stage, where its quoted price and discount offer could have been compared with those of other tenderers who had qualified. Under these circumstances, the appellant's claim lacks merit, and this ground fails.

We also acknowledge the appellant's concession regarding its failure to comply with SEA and find no need to consider this point further.



In light of the foregoing, we conclude affirmatively that the disqualification of the appellant's tender was justified.

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

In view of the foregoing findings, we hereby dismiss the appeal for lack of merit. The respondent is allowed to proceed with the tender process in compliance with the law. We make no order as to costs.

**It is so ordered.**

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

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

This decision is delivered in the physical presence of the respondent and virtual appearance by the appellant this 22<sup>nd</sup> day of January 2026.

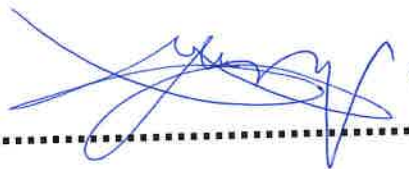
**HON. JUDGE (rtd) AWADH BAWAZIR**



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. DR. WILLIAM KAZUNGU** .....



**2. MS. FLORENTINA SUMAWE**.....

