IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 40 OF 2025-26

BETWEEN

M/S WEST FOOD COMPANY LIMITED...................... APPELLANT

AND

SONGEA DISTRICT COUNCIL .... RESPONDENT

DECISION

CORAM

1. Ms. Florentina Sumawe - Ag. Chairperson
2. Dr. William Kazungu - Member
3. Dr. Gladness Salema - 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. Zuberi Maulidi - Advocate Diversity Attorneys

FOR THE RESPONDENT

1. Ms. Elizabeth Gumbo - District Executive Director
2. Ms. Happiness Komba - Head of Procurement Management Unit (HPMU)
3. Mr. Pascal Kapinga - Head of Legal Services

4. Mr. Elias Sanga - Accountant

This appeal was lodged by **M/S West Food Company Limited** (hereinafter referred to as **"the appellant"**) against **Songea District Council** (hereinafter referred to as **"the respondent"**) concerning Tender No. 82N1/2025/2026/NC/88 for Revenue Collection Agency of Songea District Council (hereinafter referred to as **"the tender"**).

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

The Tender was done through National Competitive Tendering method in accordance with 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 1st April 2026, the respondent, through National e-Procurement System of Tanzania **(NeST),** invited eligible tenderers to participate in the Tender, with the submission deadline set for 8th April 2026. By the deadline, eleven tenders, including that of the appellant were received and evaluated. Upon completion, the evaluation committee recommended award of the tender to M/S LAS Innovations Limited **(the proposed awardee)**.

On 2nd June 2026, the respondent issued a Notice of Intention to Award through NeST, informing the appellant of its intention to award the tender to the proposed awardee at the contract price of Tanzania Shillings Three Billion Two Hundred Sixty-Four Million only (TZS

3,264,000,000.00) VAT Exclusive for a completion period of 120 days. The Notice further stated that the appellant's tender was not considered for award as it was not the lowest evaluated tenderer in terms of financial evaluation.

Dissatisfied with the reason for disqualification, the appellant applied for administrative review to the respondent on 6th June 2026. The respondent dismissed the application through a decision issued on 8th June 2026. Further aggrieved, the appellant lodged the present appeal before the Appeals Authority on 11th June 2026.

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

1. **Whether the disqualification of the appellant's tender was justified;** and
2. **What reliefs if any are the parties entitled to?**

SUBMISSIONS OF THE APPELLANT

The appellant's submissions were made by Mr. Zuberi Maulidi, learned counsel who commenced by stating that the appellant duly participated in the tender process. On 2nd June 2026, the respondent issued the Notice of Intention to Award, informing the appellant on its intention to award the tender to the proposed awardee. The Notice informed the appellant that its tender was not considered for award as it was not the lowest evaluated tenderer at the financial evaluation stage.

Mr. Maulidi submitted that according to the tender opening report, the appellant quoted Tanzania Shillings Four Billion Three Hundred Million only (TZS 4,300,000,000.00) VAT exclusive, which was higher than other tenderers, including the proposed awardee. He argued that since the tender was for revenue collection, the award should have been made to the highest evaluated tenderer, and therefore the appellant ought to have been awarded the tender. He contended that the respondent's rejection of the appellant's tender on the reason that it was not the lowest evaluated tenderer was contrary to the requirements of the tender document.

Mr. Maulidi emphasized that the tender document clearly provided that revenue collection tenders must be awarded to the highest evaluated tenderer, i.e., the tenderer quoting the highest price. The appellant was therefore surprised to be informed that its tender was rejected for not being the lowest evaluated.

He further argued that, upon receiving the Notice of Intention to Award, the appellant applied for administrative review before the respondent who stated in its decision that, award was not solely based on price but also on compliance to other requirements in the tender document, which the proposed awardee satisfied.

Mr. Maulidi argued that the respondent failed to disclose the specific criteria allegedly not met by the appellant, either in the Notice of Intention to Award or in its decision on administrative review. He submitted that this omission implied that the appellant complied with all the criteria. He further contended that the respondent's reliance on other undisclosed criteria as the basis for disqualification, contravened section 51 (4) of the Act, which requires evaluation criteria to be disclosed to all tenderers.

He maintained that the Respondent's decision was inconsistent with the tender document, particularly clause 13.3 of the Instruction to

Tenderers (ITT), which expressly requires award to be made to a tenderer quoting the highest price in order to maximize revenue collection.

Mr. Maulid disputed the appellant's disqualification on other grounds neither stated in the Notice of Intention to Award nor in the respondent's decision on Administrative Review. He maintained that, the two documents indicated the reason for the appellant's disqualification to be not the lowest evaluated tenderer. He therefore, alleges that, the appellant's disqualification on such a reason was unjustified.

He concluded his submissions by praying for the following orders: -

i) Award to the proposed awardee be nullified.
ii) The tender be re-evaluated in accordance with the law.
iii) The appellant be awarded the tender.
iv) Any other relief that the Appeals Authority may deem just.

REPLY BY THE RESPONDENT.

The respondent's submissions were made by Mr. Pascal Kapinga assisted by Ms. Happiness Komba.

Mr. Kapinga commenced by stating that the tender document clearly set out all criteria required for this tender, and therefore there were no undisclosed criteria as alleged by the appellant. He emphasized that the law requires procuring entities to provide reasons for disqualification in the Notice of Intention to be issued to unsuccessful tenderers, which the respondent did.

In support of his argument, Mr. Kapinga cited ***PPAA Appeal Case No. 34 of 2021*** between ***M/s Jumbo TZ LTD vs Tanga UWASA,*** where the Appeals Authority held that procuring entities are required to issue reasons for disqualification, but not the entire evaluation report. He argued that the respondent complied with this requirement by providing the appellant with a reason for its disqualification, noting that the law does not require disclosure of all reasons. Mr. Kapinga further submitted that the award of the tender to the proposed awardee was proper in law, as it was the only tenderer that complied fully with the requirements of the tender document.

On her part, Ms Komba elaborated that eleven (11) bids were received by the submission deadline. These were subjected to three stages of evaluation: commercial, technical and financial. She stated that the appellant's tender was disqualified at the commercial evaluation stage for failure to comply with the criterion on access to financial resources, and therefore did not proceed to subsequent stages. She stated that only two tenderers advanced to technical and financial evaluation stages, and the appellant was fairly disqualified.

Ms. Komba added that the actual reason for the appellant's disqualification was failure to comply with access to financial resources criterion. However, when issuing the Notice of Intention to Award, the wrong reason was mistakenly communicated. Notice of Intention to award had a typographical error which indicated that the appellant's tender was unsuccessful for not being the lowest evaluated instead of failure to comply with access to financial resources requirement. She emphasized that this anomaly did not affect the fact that the appellant was fairly disqualified.

Finally, Mr. Kapinga concluded by praying for the following:

i) A declaration that the award of the tender to the proposed awardee is justified; and

ii) Appeal be dismissed for want of merits.

REJOINDER

In his brief rejoinder, learned counsel for the appellant submitted that the reason for the appellant's disqualification was expressly stated in the Notice of Intention to Award. He argued that the respondent's contention, raised during the hearing, that the stated reason resulted from a typographical error or mistake, is merely an afterthought intended to justify the impugned decision.

He therefore urged the Appeals Authority to confine its determination to the reason communicated in the Notice of Intention to Award and not to entertain any new or alternative grounds for disqualification which were not previously disclosed.

ANALYSIS BY THE APPEALS AUTHORITY

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

In determining this issue, we considered the parties' rival submissions. The appellant challenged the reason given for its disqualification, namely that its tender was not considered for award because it was not the lowest evaluated tenderer at the financial evaluation stage. The appellant contended that this reason was contrary to the tender document, which expressly provided that the contract would be awarded to the tenderer quoting the highest price, as the tender was for revenue collection. The appellant maintained that it submitted the highest financial offer and was therefore eligible for award. It further contended that although the respondent later alleged non-compliance with certain qualification requirements, no such deficiencies were disclosed either in the Notice of Intention to Award or in the decision on administrative review. The appellant, emphasized that allegations of non-compliance with access to financial resources criterion were raised for the first time during the hearing and should therefore be disregarded as an afterthought.

Conversely, the respondent submitted that the evaluation was undertaken in strict compliance with the requirements and criteria prescribed in the tender document. It maintained that the appellant's tender was disqualified at the commercial evaluation stage for failure to comply with access to financial resources criterion, and therefore did not proceed to subsequent stages, including financial evaluation. The respondent admitted that the Notice of Intention to Award erroneously stated that the appellant's tender was not the lowest evaluated but argued that this was a mere communication error that did not alter the actual basis for disqualification.

Given these competing arguments, we found it necessary to establish the actual reason for the appellant's disqualification.

Upon reviewing the record of appeal, particularly the Notice of Intention to Award, we observed that the appellant's tender was not considered for award because it was not the lowest evaluated tenderer at the financial evaluation stage. The evaluation report shows that eleven tenders including that of the appellant were received and evaluated. The appellant's tender was disqualified at the commercial evaluation stage for failure to comply with the access to financial resources criterion. Consequently, the appellant's tender did not proceed to technical and financial evaluation.

We then considered regulation 238(3) of the Regulations, which provides:

> *"r.238 (3) The notice referred to in sub regulation (2) shall contain-*
>
> *(a) the name of the successful tenderer;*
>
> *(b) the total contract cost and the completion or delivery time; and*
>
> *(c)* ***the reasons for the unsuccessful tenderer's failure according to the evaluation report.****"*
>
> (Emphasis added)

This provision requires a procuring entity, when issuing a Notice of Intention to Award, to inform tenderers on the name of the successful tenderer, the contract amount, the completion period and the reasons for the unsuccessful tenderer's failure as detailed in the evaluation report.

Applying this provision to the facts of the present appeal, we find that the Notice of Intention to Award did not state the correct reason for the appellant's disqualification as stated in the evaluation report.

In light of this observation, we find that the respondent's Notice of Intention to Award to have failed to comply with regulation 238(3)(c) of the Regulations, which obliges a procuring entity to communicate accurately and clearly the reasons for the unsuccessful tenderer's rejection as contained in the evaluation report.

We considered the Appellant's contention that the respondent's reliance on failure to comply with the access to financial resources criterion was an afterthought and should be disregarded. We are of the view that although the Notice of Intention to Award did not state the correct reason, the evaluation report unequivocally shows that the Appellant's tender was disqualified at the commercial evaluation stage for failure to comply with the access to financial resources criterion. In determining the validity of the disqualification, the Appeals Authority cannot disregard the actual findings of the evaluation report merely because they were inaccurately communicated in the Notice.

Accordingly, we are of the settled view that the actual reason for the appellant's disqualification was failure to demonstrate access to financial resources. Having established this, we now proceed to determine whether disqualification on this ground was justified.

We reviewed Section IV - Evaluation and Qualification Criteria, specifically the commercial evaluation requirement on access to financial resources, which provides:

> ***"Access to Financial Resources (Sources of Fund)***
>
> ***(SCORE: Comply/Not Comply to specified minimum requirements)***
>
> *Tenderers are required to demonstrate details of their sources of finance that show their ability to access adequate finances to meet the cash flow requirements of current and future contracts. (In the case of a Joint Venture, compliance requirements are all Parties Combined – Must Meet requirements).*

Average fund amount from all sources (any freely convertible currency proposed by bidder)	***200000000"***

This provision requires tenderers to demonstrate details of their sources of finance sufficient to show their ability to access adequate finance to meet the cash flow requirements of current and future contracts.

In assessing whether the appellant complied with the access to financial resources criterion, we reviewed its tender submission in NeST. At the access to financial resources slot, the appellant listed five items:

i) An inventory with a value of Tanzania Shillings Twenty Five Million only (TZS 25,000,000/=). It supported this information by attaching a Motor Vehicle Registration Card No. T773 DHM, Toyota Brevis registered in the name of Amina Nassoro Msangi. However, there was no valuation report to prove the indicated value.

ii) Cash and bank balance of Tanzania Shillings Eighty Three Million Two Hundred Ninety Six Thousand Six Hundred and Twelve only (TZS 83,296,612/=). In support of this information, it attached an NMB Customer Account Statement dated 27th March 2026, issued by NMB Makambako Branch, showing the balance of Tanzania Shillings One Hundred and Three Thousand Four Hundred and Sixty Nine only (TZS 103,469.00).

iii) Lines of credit with a value of Tanzania Shillings Sixty Million (60,000,000.00). The attached document for support of this amount was an introduction letter dated 10th April 2024, from TRA Makambako Branch which indicated that the appellant has been registered as revenue collector, with Taxpayer Identification Number (TIN) No. 139-025-563, effective from 12th April 2019; a Certificate of Incorporation of Company No. 139025563; an NMB Customer Bank Statement dated 2nd May 2023, which did not show the actual available balance; and an NMB Customer Bank Statement dated 6th April 2021, which also did not indicate the actual available balance.

iv) An Inventory valued at Tanzania Shillings Twenty Five Million only (TZS 25,000,000.00). It supported this information by attaching a Motor Circle Registration Card No. MC 846 AKG, owned by Athuman Idd Makera. However, no valuation report was provided to substantiate the stated value of the inventory.

v) An inventory valued at Tanzania Shillings Thirty Million only (TZS 30,000,000.00). It supported this information by attaching Motor Vehicle Registration Card No. T677 DNP, Toyota IST registered in the name of Doreen Martin Mnzava. However, no valuation report was submitted to establish the actual value of the inventory.

From these items, we observed that none demonstrated access to financial resources amounting to the required TZS 200,000,000.00. Similarly, the inventories were not registered in the appellant's name and no valuation reports were provided to substantiate their stated value. The bank statement showed a balance of Tanzania Shillings One Hundred and Three Thousand Four Hundred and Sixty-Nine only (TZS 103,469.00), far below the required threshold. The documents submitted under the lines of credit did not establish any monetary value.

During the hearing, the learned counsel for the appellant conceded that the inventories relied upon were not owned by the appellant, though consent to use them had been obtained from the registered owners. We find that such consent alone cannot establish ownership or demonstrate access to financial resources sufficient to meet cash flow requirements for future and current contracts. Accordingly, it is clear that the appellant failed to comply with access to financial resources criterion.

We 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 added)

The above provisions require tenders to be evaluated solely on the criteria set out in the Tender Document. Any tender that fails to meet those criteria should be rejected and cannot be made responsive through correction or withdrawal of the deviation.

Applying these provisions to the facts of this appeal, we observe that the evaluation of tenders was conducted in accordance with the requirements prescribed in the tender document, and responsiveness was assessed solely on the contents of the submitted bids. In view of this position, we find the respondent's act of disqualifying the appellant's tender to be proper and consistent with regulation 213(2) of the Regulations.

We further considered the appellant's contention that, since the tender was for revenue collection and it had submitted the highest price, it ought to have been recommended for award. Based on the above findings, we are unable to agree with this contention. The appellant's tender was disqualified at the commercial evaluation stage for failure to comply with the access to financial resources criterion and therefore did not proceed to subsequent stages, including financial comparison. Accordingly, the mere fact that the appellant quoted a higher price could not, by itself, entitle it to the award of the contract, as only tenders that successfully pass all preceding stages of evaluation are eligible for financial comparison and eventual award.

We also reviewed Regulation 219 (a) of the Regulations, which provides:

> *"r. 219 The successful tender shall be-*
>
> > *(a) the tender with the lowest evaluated tender price in case of goods, works or services, or* ***the highest evaluated tender price in case of revenue collection, but not necessarily the lowest or highest submitted price****, subject to any margin of preference applied";*

(Emphasis added)

This provision establishes that a successful tender is determined by the lowest evaluated price in the case of goods, works, or services, and by the highest evaluated price in the case of revenue collection. From the record of this appeal, it is undisputed fact that the appellant was not the highest evaluated tenderer since its tender did not proceed to financial evaluation stage where its price would be evaluated. For that reason, it is not eligible to be awarded the contract.

Accordingly, we conclude affirmatively on the first issue that the disqualification of the appellant's tender was justified.

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

Taking cognizance of the foregoing findings, we are satisfied that the appellant was fairly disqualified. However, we find that the respondent failed to discharge its statutory duty to communicate the correct reason for the appellant's disqualification in the Notice of Intention to Award. This incorrect communication misled the appellant on the basis for its disqualification and is the cause of the present appeal.

Accordingly, we partly dismiss the appeal to the extent that the appellant's disqualification was justified, but we partly uphold it on account of the respondent's failure to provide the correct reason for the appellant's disqualification.

In view of the observed respondent's omission and considering that it triggered the institution of this appeal and the subsequent expenses incurred by the appellant in attending the appeal, we order the respondent to compensate the appellant the sum of Tanzania Shillings

One Million (TZS 1,000,000.00) only, being the appeal filling fees and reasonable incidental costs.

It is so ordered.

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

The parties are hereby informed of their Right of Judicial Review under section 125 of the Act.

This decision is delivered in the physical presence of the respondent and virtual appearance by the appellant this 6th day of July 2026.

MS. FLORENTINA SUMAWE

....

Ag. CHAIRPERSON

MEMBERS: -

1. **DR. WILLIAM KAZUNGU** ....
2. **DR. GLADNESS SALEMA** ....