



**TANZANIA UNITED CONTRACTORS AND ALLIED
SERVICES ASSOCIATION**

(TUCASA)

**Consultative Meeting Between the Minister for Works
(and Other Government Officials) and Contractors
and Consultants, on 21st November 2023, at Jakaya
Kikwete Convention Centre, DODOMA**

SUBMISSION FROM TUCASA

November 2023

These talking points are prepared by the Tanzania United Contractors And Allied Services Association (TUCASA) as an advance information to the Minister for Works and other government officials present at the Consultative Meeting or to those who some of the proposals will be directed to for reference, if any may be required.

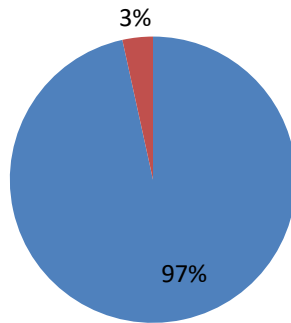
TUCASA is a newly registered association for contractors and allied services providers. The genesis of it stemmed from a CRB meeting that took place on 23rd May 2022. In this meeting all the many associations that were representing the contractors mutually agreed to join together and form one association that will represent contractors in the country. Through that meeting a Steering Committee was formed constituting members from each association. That is, CATA (Stephen Makingo, Albert Muhanika, Richard Maly and John Bura), TACECA (Mohammed Versi, Pascal Ncheye and Clement Mworja), TWCA (Judith Odunga and Deborah Sengati) and ACCT (Milton Nyerere, Julius Neema, Samuel Marwa and Levina Muro). The Steering Committee worked on and organised a meeting of all contractors which also invited contractors not belonged to any association and was held on 16th July 2022 in Dodoma. In this meeting it was agreed that each association should select two members to form an interim committee that would work on the constitution and other modus operand for merging the existing association and incorporate those who did not belong to any association in forming one contractors association. The Interim Committee worked on it and on 24th March 2023 it organised a meeting of all contractors to consider and approve the constitution. In that meeting the members charged the Interim Committee with responsibilities of an Interim Leadership for TUCASA and ensure all the procedures for registration. TUCASA was officially registered on 12 September 2023.

We are writing in response to your invitation to contractors to attend a consultative meeting in Dodoma on 21st November 2023 with the government officials. We have the following issues for discussion. We conducted a survey of opinions from our members and the burning issues are presented below including our comments and proposals for improvement. We also captured the current situation.

1) CURRENT SITUATION:

A snap shot of the current situation regarding local contractors' participation in construction projects is alarming. Based on some data, it is evident that the level of indigenous involvement in the construction sector is currently unbalanced. Roughly the status quo for local contractors versus foreign contractors is as per the graphs below:

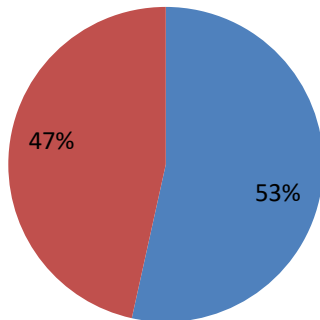
Total Number of Registered Contractors (14,800)



■ Local contractors (14,250)
■ Foreign contractors (550)

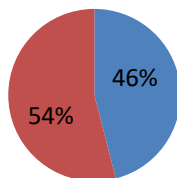
Number of Tenders/ contracts awarded

■ Local contractors ■ Foreign contractor



Value of Tenders / contract awarded

■ Local Contractors ■ Foreign Contractors



This is to say:

- a) Total number of registered contractors from Contractors Registration Board is about 14,800 whereby 14,250 (about 96%) are registered as Local contractors and only 550 (about 4%) are registered as Foreign contractors.

This implies that while there are over 96% registered local contractors, they are only involved in about 53% of total projects undertaken valuing less than 47%. This is a huge imbalance calling for a serious attention.

- b) Even those companies registered as local some leave a lot to be desired. The presence of foreign-controlled companies operating as local contractors (sometimes with fake shareholding) has distorted the construction industry market, making it challenging for genuine local contractors to compete on a level playing field. On face value CRB (using returns from contractors) see that 53% of works are contracted to locals but this is a distortion because the companies enjoying a big junk of this amount are those foreign dominated companies. This has hindered the growth and participation of genuinely local construction firms in Tanzania.

Notwithstanding, some Government Policies and laws have been suppressing the participation of local contractor in construction projects causing a great challenge and threat to emerging local construction companies.

These include;

- a) **Force Account (FA):** There has been a belief that FA is a cheaper alternative to contracting purporting that contractors have been hiking prices. While this is arguably not necessarily true as some hidden costs (such as professional time consumed on what is not core business of public officers, shoddy works, over procurement of materials, no liability for patent and latent defects, etc) are not factored in the costs that are published, it has been denying local contractors (especially lower classes) to participate in public projects and thus grow.
- b) There has been lack of will by some of the public institution to enforce some of the laws and regulations already in place. For example the PPA provides for margin of preference and exclusive preference but we have been witnessing a lot of abuses of these laws and

regulations where you find foreign contractors undertaking contracts below the thresholds.

- c) Some registration criteria for contractors are outdated. For example, putting more emphasis on plant and equipment rather than intellectual capabilities. Some of these items are readily available in the market making it possible for contractors to decide between hiring and owning. This is hampering the growth of local contractors especially newly registered companies.
- d) Too many compliance agencies and regulatory authority that conflicting each other and hence making a big challenge to Local Contractors to Participate and grow in these construction projects. For example, it is not uncommon a site to be visited by CRB, ERB, AQRB, OSHA, LGAs, etc coming in a week asking almost for the same information and requiring compliance.

2) SOURCES AND REASONS FOR LOW INDIGENOUS PARTICIPATION:

Several factors contribute to the limited involvement of indigenous people in construction projects. These include;

- a) Inconsistencies on government Policy eg Procurement Act, Finance Act Law of Contract Act and Tax. Some of these are explained below.
- b) Improper political intervention in execution of construction projects
- c) Economic challenges related to accessing capital
- d) Access to modern Technology including plant and equipment
- e) Lack of interest by financial institutions to support local contracting

3) PROPOSED STRATEGIES

To address these challenges and boost indigenous participation, we recommend the following strategies:

A. GOVERNMENT POLICY AND LEGAL REFORMS:

It should be the interest of the public sector to purposely draw policies and enact laws that are geared to enhance capacity and growth of local and indigenous participants in the construction industry. We have the Kiswahili acronym that “Mjenga nchi ni mwananchi”

(the country is built by its citizens) we cannot joyfully support capital flight to foreign countries for whatever pretence. This may involve but not limited to the following:

- i) **Re-define a Local Contractor:** We strongly recommend that the government, in collaboration with BRELA (Business Registrations and Licensing Agency) and CRB (Construction Registration Board), redefines the ownership structure for local construction firms. The current definition where a local company is the one with majority shareholding of locals is sometimes abused. A foreigner may just register a company with a local parrot giving her majority share (often taking advantage of her ignorance) and continue enjoying all the privileges meant for locals. While this may not be relevant to other businesses, for construction companies it is high time the local company be defined by 100% local shareholding.

The factor of foreign individuals owning a significant number of construction companies registered as local contractors through the use of dummy shares have several negative impacts on the growth of genuine local contractors in Tanzania:

The factor of foreign individuals owning a significant number of construction companies registered as local contractors through the use of dummy shares can have several negative impacts on the growth of genuine local contractors in Tanzania such as;

- a. **Unfair Competition:** Genuine local contractors, whose shares are entirely owned by local individuals, face unfair competition from these companies that are, in reality, controlled by foreign owners. This makes it difficult for local contractors to secure contracts, especially if the foreign-owned companies have access to more resources or international networks that fulfils some of the hiked tender criteria.
- b. **Market Distortion:** The presence of foreign-controlled companies operating as local contractors distort the market, making it challenging for genuine local contractors to compete on a level playing field. This hinders the growth and development of local construction firms.

- c. **Economic Leakage:** When foreign individuals own and control construction companies operating as local contractors, the profits and economic benefits generated by these firms are not staying within Tanzania. This result in economic leakage, as the revenue earned may be repatriated to foreign countries rather than being reinvested in the local economy.
 - d. **Limited Opportunities for Local Entrepreneurship:** The presence of foreign-owned construction companies operating as local contractors restrict opportunities for local entrepreneurship and limit the growth of genuinely local-owned businesses in the construction sector. This is detrimental to the long-term development of the local industry.
 - e. **Skills and Knowledge Transfer:** Foreign-owned companies may not be as committed to transferring skills, knowledge, and technology to the local workforce as genuine local contractors. This can impede the development of a skilled and knowledgeable local workforce.
 - f. **Potential for Corruption:** The use of dummy shares to comply with legal requirements can also create opportunities for corruption and unethical practices, as individuals may seek to exploit loopholes in regulations. This can undermine the integrity of the construction industry and hinder its growth.
- ii) **Force Account:** All construction projects undertaken by force account should be limited to Tsh 10,000,000.00 (Tanzanian shillings Ten Million only). The current procurement Act No. 10 of 2023, Part six Article 76(2) should indicate the limit value of project undertaken by Force account. The term "small projects" in this Act is not clearly defined in terms of size or criteria. A project can be small but still complex, requiring a contract-based approach. Project size should be defined by law, not left to individual discretion.

However the use of force account has caused the following consequences;

- a. Some researches has shown that many projects fail to meet their deadlines due to inaccurate project estimates, inadequate supervision and resulting in project delays.

- b. Professionals such as Teachers and doctors are often busy and incompetent to act on construction projects hence unable to provide proper oversight. This lead to low quality assurance, no material testing, and inadequate supervision of the project. Furthermore, it steals their professional time they would otherwise have used to attend their core functions and thus deny those they would have attended the opportunity to enjoy their services.
- c. There are regulatory boards with the authority to oversee engineers, register contractors, and allocate public funds. However, the government restricts the growth of contractors, leading to lost revenue, such as project registration fees.
- d. There is a shortage of experienced professionals in the country. Graduates lack the necessary training and experience, as force account projects do not provide proper practical training. If these graduates were under contractors, they would receive the necessary on-the-job training, enhancing their skills and expertise in their profession.
- e. Local fundi delivers work, defects and other necessary repairs are typically the liability of the client. In this case, the client is responsible for attending consequential defects and snags and thus increase the overall project cost.

iii) Work Experience of a Construction firm as one of major evaluation criteria:

The government, as the major procuring entity for construction services should consider adopting and implementing alternative qualification criteria for newly registered local construction firms, for example, of Class five and below. These alternative criteria may include:

- a. Providing evidence of individual sufficient experience for directors and key personnel of that firm, such as engineers, architects, surveyors, and technicians, with a minimum of three years of relevant experience.
- b. Demonstrating sufficient working capital to execute construction projects effectively.

These two criteria can facilitate the qualification and engagement of newly established local contractors in construction projects. The current requirement of providing a project completion certificate as the sole evaluation criterion can

be a significant obstacle for them to participate in construction projects. Additionally, the government encourages joint ventures for local companies to gain experience. However, the evaluation criteria for these joint venture tenders are often stringent, making it challenging for startups to sustain their participation in the construction sector.

iv) Exceptionally low priced bids: Procuring entities should be directed to **reject exceptionally low price bids** even when they are **lowest evaluated**. This will help increase the participation of capable local contractors in construction projects in Tanzania in several ways:

- a. Promotes Quality and Sustainability: Contractors who submit realistic bids are more likely to have a sound understanding of project requirements and are more likely to deliver quality work. This approach ensures that the selected contractor is financially stable and capable of completing the project successfully, contributing to the long-term sustainability of the construction industry in Tanzania.
- b. To ensure a level playing field, promotes quality and sustainability, reduces the risk of project abandonment, encourages local capacity building, fosters confidence and trust in the procurement process, and supports local economic development. These factors collectively enhance the participation of local contractors in construction projects in Tanzania and contribute to the growth and improvement of the construction industry in the country.

v) Insurance bonds as Performance guarantee: The government should direct procuring entities to accept insurance bonds as performance guarantees instead of solely relying on bank guarantee bonds. It is the business of insurance institutions to undertake risk management by providing indemnity and intermediation role in the economy ensuring financial stability. Currently the level of regulation and monitoring insurance activities in the country is appreciable and dependable. There is adequate assurance of public finance using insurance bonds as well as helping reduce the overall costs in the industry than using bank guarantees. Afterall, if banks mitigate their risks using insurance institutions.

This proposed administrative review will be beneficial because insurance bonds are easier to process, and it can potentially enhance the involvement of local contractors in construction projects. Furthermore, it will untie the capital, which is otherwise used to secure bank guarantees, to be used in the intended project execution.

vi) **Enhancement and enforcement of Performance Securing Declaration:** In 2022 the PPRA issued guidelines for Securities in Public Procurement. Guideline 11 provides for use of **Performance Securing Declaration** and 13.2 defines that **Performance Securing Declaration** shall apply in all tenders which fall within the threshold of **Regional Exclusive Preferences**, which is TSh One Billion contract. While this is a welcome initiative to help local contractors to participate in government projects as bonds ties a lot of money at the initial stage that, otherwise, would have been used for the actual work, the threshold of **One Billion is still too low** to help contribute to the growth of local contractors. Notwithstanding, a number of Employers do not accept the **Performance Securing Declaration** as a form of guarantee. We propose a review of the Guideline to increase the threshold **to at least TSh Five Billion** and in addition enact a system to enforce the Guideline.

vii) **Use of Payment Guarantees:** The current practice mandates that local contractors submit performance guarantees to protect the interests of the client. However, it has become increasingly evident that a modification is needed in the form of a payment guarantee from the client to safeguard the contractor. This adjustment is crucial in addressing the persistent issue of delayed payments, which frequently occurs even after the contractor has submitted a payment certificate that has been approved by the project manager.

The issue of delayed payments has resulted in significant adverse consequences for contractors, including project delays and additional financial burdens. Contractors often struggle to meet their financial obligations, incurring high interest rates on loans taken to sustain their operations. Moreover, these delays have also led to clients

imposing liquidated damages, compounding the financial strain on contractors and, in some unfortunate cases, driving them towards insolvency. Introducing a payment guarantee from the client would go a long way in mitigating these challenges, providing financial security for the contractors, and ensuring that projects are completed in a timely manner and at the same time contributing to the growth of the local contracting.

- viii) Interest on delayed payments:** Most Standard Forms of Contract used in the country provides for interest payment on delayed payments. However, there has been laxity on some procuring entities to effect. It is high time a law is enacted to guarantee the interest payments. Some countries, such as the UK, have enacted laws to guarantee the payment (the Housing Grants, Construction and Regeneration Act (HGCRA) is an example). This measure is crucial to ensure that contractors are not unduly burdened by delayed payments, encouraging a prompt and equitable settlement of their dues. This will promote a spirit of cooperation and differentiate it from the traditional contracts, which tend to follow a more adversarial, ‘us and them’ approach that, for all standards, cannot be pro-growth to local contractors.
- ix) Advanced payment should be raised from 15% to 35% :** In order to facilitate the smooth execution of projects by local contractors and promote timely completion, it is advisable to consider raising the advanced payment percentage from 15% to 35%. This adjustment in the advanced payment policy aims to provide local contractors with greater financial support, thereby enhancing their ability to manage project costs effectively and meet project deadlines.
- x) Tax point for V.A.T:** The VAT Act provides that a **tax point** is earliest of the Tax Invoice or Payment Certificate issuance. This is unrealistic as the contractor will be legally required to pay the tax even before they have collected it as some payments takes a long time to be actually paid. In light of these challenges, it is advisable to consider a more practical approach by deducting V.A.T at the point when the payment is actually made, streamlining the process and ensuring fair taxation.

- xi) Tax Exemptions:** The practice of granting tax exemptions in construction projects has inadvertently led to delays in project execution. Currently, tax exemptions are processed on particular supply invoices. This means one have to apply for tax exemption for every order of materials the process which is lengthy and prone to causing significant delays. We propose special tax exemption certificates for projects that are tax exempted that can be presented to suppliers as and when ordering those goods.
- xii) Withholding Tax (WHT):** Withholding tax is the amount of tax retained by one person when making payments to another person in respect of goods supplied or services rendered by the payee. Concerning contractors, we are made liable to service fees and goods supply. Payments for goods supplied to Government and its institutions by any person is charges 2% and service fee is 5%.

We have no problem with the WHT being withheld or remitted, the problem is with the interpretation of this law and the way it is considered in a construction contract:

a) Service

TRA is equating the service rendered by consultants (eg. Consulting engineers, quantity surveyors, lawyers, accountants, and the like) with the service rendered by the contractors. The service rendered by contractors quite different. The nature of the contracting service requires that a contractor buys materials and pays for labour on behalf of the structure owner. Then his service becomes what it takes to mingle materials and labour to give a structure. This service needs to be redefined. In some arrangements a Client can pay directly to suppliers and labourers and deduct the same from IPCs, which cannot be the case for consultants.

b) Supply of goods

Likewise, the TRA is equating the goods supplied by Suppliers with materials bought by contractors for building structures. A supplier is capping its profit for sell of materials while a contractor is buying on behalf of the Client to

make a structure, contractors are not selling materials to Clients. An example is, even for contracts that pay material on site, a contractor needs to show the prices they bought to be reimbursed, no profit capping is considered. There is a need to review the interpretation and charge what a contractor is lawfully owed.

c) WHT as charged in a construction contract

Most Clients take a contract sum and divide it that 60% is materials and charge them 2% and 40% as service fee and charge it 5%. The interpretation here is that the contractor is selling cement, aggregates, sand, bitumen, etc to Clients, which is not the case. We feel this interpretation is also wrong that needs to be looked at again.

B. FINANCIAL SUPPORT:

We suggest establishing programs or funds that provide financial support, loans, or grants to indigenous entrepreneurs in the construction sector, enabling them to compete effectively. The following strategies shall be used;

Government to guarantee Local contractors: It is recommended that the government assumes a strategic role as the primary guarantor for local contractors seeking contracts. This would entail enabling commercial banks, under the supervision of the Bank of Tanzania (BOT), to provide credit facilities and project financing loans to all local contractors at affordable interest rate ranging between 1.5% and 2%. This supportive financial mechanism would empower local contractors to undertake projects with greater ease and financial stability, ultimately fostering the growth of the local construction industry.

C. SKILL DEVELOPMENT AND POLICY ENFORCEMENT:

We recommend creating training and development programs to enhance the skills and knowledge of indigenous professionals and workers in construction-related fields.

i) Training and mentorship: To strengthen the capabilities of contractors, a deliberate effort should be made by both the government and construction

industry associations. This can be achieved through a multifaceted approach that includes training, mentorship, experience sharing, and legislative reforms.

These training initiatives, which should be offered at no cost to contractors, will not only contribute to the professional development of these contractors but also promote industry standards and best practices. In addition to training, mentorship and experience sharing should be encouraged, allowing contractors to learn from experienced professionals and further enhance their capabilities. Legislative reforms can complement these efforts by creating a conducive regulatory environment that fosters the growth and development of contractors.

ii) Contractors Associations: Contractors' associations, such as TUCASA (Tanzania United Contractors and Allied Services Association), play a pivotal role in shaping the growth, development and monitoring the practice of local contractors. It is our firm belief that these associations, in close collaboration with the government, can significantly contribute to nurturing local contractors. Therefore, we recommend that the government, specifically through the Contractors Registration Board (CRB), should introduce a mandatory criterion during the registration of new contractors. This criterion would require newly registered contractors to become members of any recognized contractors' association, such as TUCASA. Sister Regulators such as AQRB have such a provision for which Bylaw 14.2 (b) provides that every Firm to obtain Practicing Licence must show evidence that they are active members of their respective associations.

By imposing this requirement, the government can foster a stronger connection between local contractors and these associations, , facilitating access to a wealth of industry knowledge, mentorship, networking opportunities, and other valuable resources. This collaboration would not only promote professional growth but also enhance the overall capacity and competitiveness of local contractors in the construction sector

iii) **Close monitoring on Local contents and Exclusive preferences** : The implementation of exclusive preferences and local content requirements often involves rigorous reporting and monitoring mechanisms. This ensures that the set standards are met and that local contractors actively contribute to the project's success.

- a. **Legislation and Policies:** The government to continue enacting legislation and policies that explicitly grant exclusive preferences to local contractors. This can include regulations stipulating that a certain percentage of government contracts or projects must be awarded to local companies. These policies are often part of broader initiatives to promote economic empowerment and development within the country.
- b. **Reserved Contracts:** Some contracts are exclusively reserved for local contractors, especially smaller projects or those deemed crucial for local development. This ensures that local businesses have the opportunity to bid for and secure these contracts, contributing to their growth and sustainability.
- c. **Local Content Requirements:** Government projects include specific local content requirements, mandating that a certain portion of the project's materials, labour, or services must be sourced locally. This approach stimulates the local economy by encouraging the use of local resources and expertise. This should not be limited to financial values (such % of contract sum) but also to the work fabric promoting skill transfer and project execution capabilities.
- d. **Preferential Treatment in Procurement:** In the procurement process, local contractors are given preferential treatment in terms of evaluation criteria. This involve awarding additional points or considerations to local bidders, making it more likely for them to win the contract.
- e. **Capacity Building:** The government invest in capacity building initiatives aimed at enhancing the skills and capabilities of local contractors. By

providing training, mentorship, and support, the government helps local contractors meet the standards required for project participation.

- f. **Financial Support:** Exclusive preferences may extend to financial considerations, where local contractors may have access to favourable financing options, grants, or subsidies. This helps address potential financial constraints and enables local contractors to compete more effectively.

4) EXPERIENCES FROM OTHER SECTORS:

Similar strategies have yielded positive results in other sector, such as the mining and agriculture sectors. For example, in the mining sector, implementing policies that encouraged the involvement of local communities in mining activities resulted in increased cooperation and economic benefits. These experiences from other sectors outside the construction industry can provide valuable insights:

- a) **Capacity Building Initiatives:** Capacity-building initiatives have been valuable in various sectors in Tanzania, such as agriculture, healthcare, and education. These initiatives can provide training, mentorship, and financial support to local businesses, helping them develop the necessary skills and resources to participate in larger projects and compete effectively.
- b) **Regulatory Reforms:** Regulatory reforms have been instrumental in creating a conducive environment for local contractor involvement in Tanzania, especially in sectors like energy, utilities, and infrastructure.

5) EXPERIENCE FROM OTHER COUNTRIES:

Experiences from other countries demonstrate how effective strategies to increase the participation of local contractors can yield positive results. For example:

- a) **Malaysia:** Malaysia has successfully employed policies to promote local contractors. Construction companies founded by Malaysians are given priority in government projects. Additionally, there are training programs and financial support initiatives for local contractors to participate in major projects. As a result, local contractors have played a significant role in the construction of the country's infrastructure. (*Reference: Master builders association Malaysia*)
- b) **Uganda:** Also provides good examples of how strategies to increase the involvement of local contractors can yield positive results. In Uganda, the government has implemented policies and strategies that prioritize local contractors in construction projects. Some of the steps taken include:
- i) Establishment of the Uganda Construction Fund (UCF): UCF is an institution established by the government to provide low-interest loans to local contractors. This has helped local contractor's access capital for working on major projects.
 - ii) Training and Skill Development: The Ugandan government has been providing training to local contractors to build their technical and project management skills. This has increased their capacity to participate in larger projects.
 - iii) Investment Laws: Uganda has made changes to investment laws to give preference to local contractors in government projects. This has increased their participation in construction projects.
 - iv) Formation of Contractor Associations: The government has supported the formation of contractor associations, such as the Uganda Association of Consulting Engineers (UACE) and the Uganda National Association of Building and Civil Engineering Contractors (UNABCEC). These associations provide opportunities for learning, experience-sharing, and skill improvement for local contractors.

These examples illustrate how well-thought-out strategies, including legal policies, training, and financial empowerment, can successfully increase the involvement of local

contractors in construction projects. The outcomes include strengthening the local economy, creating job opportunities, and enhancing the skills of local contractors. Tanzania can draw from this experience to boost the participation of local contractors in the construction sector.

We believe that these strategies, if effectively implemented, will help enhance indigenous participation in construction projects and contribute to the sustainable development of the construction sector in Tanzania.

Please feel free to reach out if you require any further information or clarification regarding our proposals.

We look forward to working collaboratively on this important initiative.