

**IN THE  
PUBLIC PROCUREMENT APPEALS AUTHORITY  
AT DAR ES SALAAM**

**APPEAL NO 14 OF 2013-14**

**BETWEEN**

**M/S MFI OFFICE SOLUTIONS**

**LIMITED.....APPELLANT**

**AND**

**TANZANIA SOCIAL ACTION FUND..... RESPONDENT**

**DECISION**

**CORAM:**

- |                              |                 |
|------------------------------|-----------------|
| 1. Hon. Augusta G. Bubeshi   | - Chairperson   |
| 2. Mr. Kesogukewele M. Msita | - Member        |
| 3. Mrs. Rosemary A. Lulabuka | - Member        |
| 4. Mrs. Nuru S. N. Inyangete | - Member        |
| 5. Mr. Ole-Mbille Kissioki   | - Ag. Secretary |

**SECRETARIAT:**

- |                           |                 |
|---------------------------|-----------------|
| 1. Mr. Hamisi O. Tika     | - Legal Officer |
| 2. Ms. Violet S. Limilabo | - Legal Officer |

**FOR THE APPELLANT:**

1. Mr. Sunil Rodriguts - Head Corporate Sales
2. Mr. Lenin Simon – Business Development Manager

**FOR THE RESPONDENT:**

1. Ms. Angela Hoyya – Procurement Manager
2. Mr. Njego Nyamoko –Member of Tender Board
3. Mr. Michael Malebo - Procurement Officer
4. Mr. Peter H. Lwanda –Member of Evaluation Committee
5. Mr. Mohamed Msallah -Member of Evaluation Committee.

**FOR THE INTERESTED PARTY**

1. Mr. Johnson M. Kapira -Managing Director
2. Mr. Gilbert H. Dedan - Managing Partner
3. Mr. Kenneth Maganga - Advocate
4. Mr. Deo Shija - Legal Counsel

This Decision was scheduled for delivery today 27<sup>th</sup> of September, 2013, and we proceed to deliver it.

The Appeal at hand was lodged by **M/S MFI OFFICE SOLUTIONS LIMITED** (hereinafter referred to as "**the Appellant**" against the **TANZANIA SOCIAL ACTION FUND** commonly known by its acronym TASAF (hereinafter referred to as "**the Respondent**").

The said Appeal is in respect of Tender No. IE/011/2012-13/HQ/G/02 for Supply of ICT and Office Equipment. The said tender had five Lots but the Appeal at hand is confined to Lot No. 5 which was for Office Equipment (hereinafter referred to as "**the tender**").

According to the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as **the Authority**), as well as oral submissions by the parties during the hearing, the facts of the Appeal may be summarized as follows:

The Respondent vide the Daily News dated 15<sup>th</sup> and 20<sup>th</sup> March, 2013, the Guardian dated 18<sup>th</sup> and 22<sup>nd</sup> March, 2013, Mwananchi dated 20<sup>th</sup> March, 2013, PPRA Journal of 15<sup>th</sup> March, 2013 and UN Development Business

(UNDB) on line of 13<sup>th</sup> March, 2013, invited tenderers to submit their tenders for the tender under appeal.

The deadline for the submission of tenders was set for 3<sup>rd</sup> May, 2013; whereby a total of thirteen tenders were received from the following firms;

<b>S/NO</b>	<b>TENDERER</b>	<b>QUOTED PRICE IN TSHS/USD</b>
1.	M/s Lugumi Enterprises	USD. 357,145/-
2.	M/s Boss Automation Ltd	Tshs. 592,453,704/- VAT inclusive
3.	M/s Business Connexion Tanzania Ltd	USD. 457,704.29
4.	M/s Planson International	USD. 506,892/-
5.	M/s Masumin Printways & Stationery Ltd	Tshs. 1,331,162,756/- for all Lots, VAT inclusive
6.	M/s Canocity Ltd	1,014,654,155.29/- VAT inclusive
7.	M/s Royal Mark Suppliers Co. Ltd	USD. 727,045.20 VAT inclusive
8.	M/s Business Machines Tanzania	USD. 525, 626/- VAT inclusive

	Ltd	
9.	M/s Solutions Commitment Integrity (SCI) Ltd	Tshs. 828,879,443.74 VAT inclusive
10.	M/s Simply Computers (T) Ltd	Tshs. 944,236,749.61 VAT inclusive
11.	M/s MFI Office Solutions Ltd	USD. 430,602/- VAT exclusive
12.	M/s Data House (T) Ltd	Tshs. 1,028,595,120/- for all Lots
13.	M/s Cats Tanzania Ltd	Tshs. 1,826,096,846/- VAT exclusive

The tenders were then subjected to four stages of evaluation, namely; preliminary examination, technical evaluation, detailed examination and post qualification.

At the preliminary evaluation stage, tenders were examined to determine if they were substantially responsive to the Tender Document.

In that process of evaluation, twelve tenders including that of the Appellant were disqualified for failure to submit Manufacturer's Authorization as stipulated under

Clause 19.1 (a) of the Instruction To Bidder (hereinafter referred to as "**the ITB**").

The only remaining tender, by M/s Royal Mark Supplies Company Limited, was then subjected to technical evaluation whereby it was found to be substantially responsive and was therefore subjected to detailed evaluation.

During the detailed evaluation, the tender was checked for arithmetical errors before currency conversion. The Evaluation Committee found the said tender to be free from errors and the converted price was Tshs. 1,163,272,320/-

The tender had to undergo post qualification whereby the Evaluation Committee verified the submitted documents for financial, experience and technical capability.

The Evaluation Committee thereafter recommended the award of the tender to M/s Royal Mark Suppliers Co. Ltd at the USD 727,045.20.

The Tender Board at its meeting held on 27<sup>th</sup> May, 2013, approved the recommendations by the Evaluation Committee.

On 23<sup>rd</sup> August, 2013, the Respondent vide a letter referenced IE/011/2012-13/HQ/G/02 communicated the award of the tender to the successful tenderer and also notified the Appellant that their tender was unsuccessful.

Being dissatisfied with the award of the tender to the successful tenderer, the Appellant, on 3<sup>rd</sup> September, 2013, lodged their Appeal to the Authority.

## **SUBMISSIONS BY THE APPELLANT**

The Appellant's arguments as deduced from documents availed to this Authority, as well as oral submissions and responses to questions raised by the Members of the Authority during the hearing may be summarized as follows:

That, the successful tenderer is not a relevant company in the line of business which deserved to be awarded the tender.

That, the successful tenderer did not possess the experience required by the Tender Document which required tenderers to submit evidence of at least three related contracts with the value of each contract equivalent or above the Tenderer's quoted price.

That, the award of tender to the successful tenderer is questionable since they had never been awarded Government tenders or World Bank contracts.

That, the well known firms in the business of the tender under appeal have not been considered for the award by the Respondent, rather, they opted for a firm which is not well known.

That, the Appellant had quoted the lowest price while the successful tenderer's price was higher but still the Respondent opted for them. The excess amount spent by the Respondent by awarding the successful tenderer could have been used to help the poor of this country.

That, their tender was disqualified on ground that they had submitted Distributor's Authorization instead of

Manufacturer's authorization. They doubt as to whether the successful tenderer's authorizations were from the manufacturers and whether the same were genuine. As per their understanding Manufacturer's Authorizations from Canon South Africa, which the successful tenderer had submitted is not allowed to be issued outside South Africa.

That, they had a letter from a Distributor who has been authorized by the Manufacturer to be the signatory on their behalf since the Manufacturer cannot be present in every territory. The Respondent had a room to seek for clarification from the manufacturer whether they had authorized the distributors to do so.

That, the Respondent ought to have rejected all tenders as per the Section 54 of the Public Procurement Act (hereinafter referred to as "**the Act**") for lack of competition since only one tenderer out of thirteen tenderers complied with the requirements of the Tender Document.

That, in many Government tenders and World Bank projects they had participated, letters from the Distributors have been accepted as an alternative of Manufacturers' Authorizations. They wonder as to why the Respondent rejected them.

That, Clause 19.1 (b) of the ITB provided for the requirement of after sales services. The successful tenderer may not have the required backup due to the fact that their operation is small and their performed contracts are few and low in value. They doubt as to whether the successful tenderer had met the said criterion.

That, the Respondent contravened Section 46 (4) of the Act for failure to allow wider competition to tenderers on specifications for photocopier to be supplied.

That, the Authority has mandate to verify the Manufacturers' Authorization letters and the three years related contracts they had submitted to prove their claims.

That, they wonder whether the successful tenderer had met such criterion as per the requirement of Section 48 (1) of the Act which requires capabilities to be shown by tenderers.

Finally the Appellant prayed for the following orders:

- i. To re-evaluate all the tenders submitted by 13 tenderers
- ii. To nullify the tender results and award the same to the rightful tenderer, alternatively order re-tendering if there is no rightful tenderer.
- iii. To compensate the Appellant sum of Tshs 6,500,000/- as per the following breakdown;
  - (a) Administrative costs reimbursement that includes Appeal filing fee Tshs 1,500,000/-
  - (b) Professional fee Tshs 5,000,000/-
- iv. Financial loss to the appellant due to questionable award of the tender to the successful tenderer to the tune of USD 86,120.40

## **SUBMISSIONS BY THE RESPONDENT**

The Respondent's documentary, oral submissions as well as responses from questions raised by the Members of the Authority during the hearing may be summarized as follows:

That, the successful tenderer submitted a licence which proved that they are in line with a business relating to the tender under appeal.

That, the successful tenderer submitted evidence showing that they had executed works for at least three years as required in the Tender Document and that they had submitted the Audited Financial Statements of three years. The purposes of the said contracts were to verify the ability to perform the contract.

That, the Appellant and other disqualified tenderers failed to comply with the requirements of the Tender Document.

That, the successful tenderer submitted letters of Authorization originating from the manufacturers.

That, the fact that other government entities have been accepting distributor's authorization does not mean that the Respondent was bound to accept the same.

That, the evidence of after sale services was provided by the successful tenderer and met the requirement of the Tender Document.

Finally the Respondent prayed that:

- i. There is no need for re-evaluation since they complied with the law and the World Bank approved their evaluation.
- ii. There is no need for nullification of the award as the contract has already been signed.
- iii. They did not cause any financial damage to the Appellant thus; they are not liable to pay the costs.

## **INTERESTED PARTY'S SUBMISSIONS.**

The Interested party's documentary, oral submissions as well as responses from questions raised by the Members

of the Authority during the hearing may be summarized as follows:

That, they have a licence which allows them to do business related to the tender under Appeal.

That, they complied with the requirements of the Tender Document with regard to experience, requisite technical and financial capability. Thus, the successful tenderer was prequalified before being awarded the tender as per the requirement of Section 47 of the Act. Hence, it was not be proper to invoke Section 48 of the Act to disqualify them.

That, the Authority has no jurisdiction to investigate the authenticity of the Manufacturer's Authorizations as raised by the Appellant as per Section 78 of the Act.

That, under the rules of evidence the one who alleges must prove. Accordingly, the Appellant owed the duty to produce evidence to justify their allegations that the successful tenderer's Manufacturers' Authorization letters

were forged. Thus, it was the duty of the Respondent to verify their authenticity and not the Authority.

That, the Tender Document did not contain, as one of its criterion that, only well known Companies would be considered for the award of tender under appeal. The criteria for award were for the one who met the requirements of the Tender Document.

That, hat, the Appellant's disqualification was due to their failure to submit the Manufacturer's Authorization; to the contrary the Appellant submitted Distributors' Authorization letters.

That, the successful tenderer had the requisite skills, financial capability and ability to provide after sales services. Furthermore, the said services were matters of contract, so it was upon the Respondent to claim redress in case they would have failed to provide the required services.

That, it was the duty of the Respondent to verify whether all the requirements of the Tender Document were met

by the tenderers and not the Authority's duty since it is not among its duties specified under Sections 78 and 84 of the Act.

Finally they prayed for the dismissal of the Appeal with costs for lack of merit.

## **ANALYSIS BY THE AUTHORITY**

Having gone through the documents submitted and having heard the oral submissions from parties, the Authority framed the following three issues:

- **Whether the Appellant was unfairly disqualified**
- **Whether the award of the tender to the successful tenderer was proper at law.**
- **To what reliefs, if any, are the parties entitled to.**

Having identified the issues in dispute, the Authority proceeded to resolve them as hereunder;

## **1.0 Whether the Appellant was unfairly disqualified**

In its endeavour to ascertain whether the Appellant's disqualification was proper, the Authority reviewed the documents submitted as well as the applicable law and the Tender Document. In so doing, the Authority observed that, Clause 19.1 (a) of the ITB required tenderers to submit Manufacturer's Authorization using the form contained under Section IV of the Tender Document. The said Clause provided as follows;

Clause 19.1 "The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Purchaser's satisfaction:

- (a) that, if required in the BDS, a Bidder that does not manufacture or produce the Goods it offers to supply **shall submit the Manufacturer's Authorization using the form included in Section IV**, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer

of the Goods to supply these Goods in the Purchaser's Country;" (**Emphasis added**)

The Authority revisited the Appellant's tender document and observed that, they had attached only one Manufacturer's Authorization from Kyocera Mita Europe B.V. for their respective products. The remaining authorizations attached to their tender were from Distributors and not Manufacturers.

The Authority is of the further view that the Appellant's tender was not in conformity with the requirement of Regulation 90 (7) of the Public Procurement (Goods, Works, Non- Consultant Services and Disposal of Public Assets by Tender) Regulations, 2005 (hereinafter referred to as "**the GN No.97 of 2005**"). Thus, it was rightly rejected by the Respondent pursuant to Regulation 90(16) of GN.97/2005. For purposes of clarity, the Authority reproduces the said provisions which read as follows;

**Reg.90(7) "A substantially responsive tender is the one which conforms to all the terms,**

**conditions and specifications of the tender document(s) without material deviation or reservations".**

Reg.90(16) "**If a tenderer is not responsive to the tender document, it shall be rejected by the procuring entity"** (Emphasis supplied).

Furthermore, Authority wishes to enlighten the Appellant that the basis for evaluation of a tender are the terms and conditions setforth in the Tender Document as per Regulation 90(4) of GN.97/2005 and not what other public institutions do. The Authority is of the opinion that the Appellant had room to seek clarification from the Respondent as to whether the Distributor's Authorizations were acceptable instead of the Manufacturer's Authorizations pursuant to Regulation 85(1) and (2) of GN 97/2005.

That said, the Authority is of the view that it was not proper for the Appellant to rely on past experience of the

tenders they had participated and equate with the tender under Appeal without following the requirements therein.

From the above findings, the Authority is of the settled view that, the Appellant indeed failed to comply with the requirement of the Tender Document in this regard.

Accordingly, the Authority's conclusion for the first issue is that, the Appellant was fairly disqualified.

## **2.0 Whether the award of the tender to the successful tenderer was proper at law.**

In resolving this issue the Authority deemed it necessary to frame sub issues to assist in its deliberations depending on parties contentions. In cause of so doing, the Authority confined itself on the specific areas of complaints by the Appellant and framed the following sub-issues:

- Whether the successful tenderer was eligible to participate in the disputed tender.**

- **Whether the successful tenderer had the requisite technical and financial capability as specified in the Tender Document.**
- **Whether the successful tenderer's manufacturer's authorizations were genuine.**
- **Whether the tender submitted by the successful tenderer complied with all specifications stated in the Tender Document**

Having framed the sub-issues above the Authority proceeded to resolve them as follows:

- (i) Whether the successful tenderer was eligible to participate in the disputed tender.**

In resolving the Appellant's contentions that the successful tenderer was not a relevant company in line of business for the tender under Appeal, the Authority revisited the successful tenderer's tender so as to ascertain the Appellant's contentions. In so doing, the

Authority observed that the certificate of incorporation and two Business Licenses were annexed to the tender. The first License No. B 01026367, issued by the Ministry of Industry, Trade and Marketing on 1<sup>st</sup> June, 2006 authorizes them to import, sell, and do maintenance of computer and accessories. The other Certificate No. B.01026370, issued by the same Ministry on the same date authorizes them to import, sell and do maintenance of photocopiers and accessories.

Consequently, the Authority's conclusion with regard to this sub issue is that, the successful tenderer was eligible to participate in the disputed tender.

**(ii) Whether the successful tenderer had the requisite technical and financial capability as specified in the Tender Document.**

In resolving this sub issue the Authority took cognizance that there was no pre- qualification undertaken contrary to the assertions by the Interested Party. Further more, the Authority considered the Appellant's contentions that

the successful tenderer lacked technical capability in terms of relevant experience and after sales services as well as financial capability as specified in the Tender Document.

The Authority noted that, the criteria which are contested by the Appellant were the criteria which were subjected for post qualification. With respect to experience and technical capacity, Clause 4(b) (i) of Part III of the Tender Document reads as follows;

(b)"Experience and Technical Capacity

**The Bidder shall furnish documentary evidence to demonstrate that it meets the following experience requirement(s):**

**Evidence of at least three related contracts with the value of each contract equivalent or above bidders bid price indicated in bid form".** (Emphasis Added).

The above notwithstanding, the Authority noted with dismay that the Respondent conducted post qualification by indicating "**YES**" on each of the criterion without elaboration. Thus, basing on the Evaluation Report it is

not possible to ascertain whether or not the said requirements were indeed met.

When asked by the Members of the Authority during the hearing as to how did the successful tenderer meet the criterion, the Respondent submitted that they found them to have met this criterion by considering three projects namely;

- i. The project for supply of Laptops, to the Open University of Tanzania worth Tshs. 1,800,000,000/-
- ii. The Project for Supply of Photocopier Machines to Prevention and Combating of Corruption Bureau(hereinafter referred to as "**the PCCB**") worth Tshs. 372,408,000/- and
- iii. The project for Supply of Laboratory Equipment for Secondary Schools worth Tshs. 500,000,000/-

Upon being asked further by the Members of the Authority, of the relevance of the said contracts, the Respondent argued that, what they were looking for was the tenderer's ability to execute the contracts. Thus, all

the three contracts were considered together in ascertaining such capability.

The Authority revisited the successful tenderer's tender and observed that, out of the three projects mentioned above, only that with PCCB was annexed to the Tender Document. However, the said project did not meet the requirement of the Tender Document for having a lower value of Tshs. 372,408,000/- compared to Tshs 1,163,272,320/- equivalent (USD 727,045.20) quoted in their Tender Form.

The Authority noted further, with surprise, that, the projects with the Open University of Tanzania and that for Supply of Laboratory equipment for Secondary Schools were not included in the successful tenderer's Tender Document. Thus, they could not have been used for evaluation. However, in case they were used for evaluation, as the Respondent purported to indicate, then that was a contravention of the law as per Sections 48(1) and (2) and Regulation 90 (4) which reads as follows;

Sec. 48 (1) "if tenderers have not been pre-qualified, the procuring entity and the tender board shall determine whether the tenderer whose tender or proposal has been determined to offer the lowest evaluated tender, in the case of procurement or the highest evaluated tender in the case disposal of public assets by tender, **has the capacity and resources to carry out effectively the contract as offered in the tender".**

(2) "**the criteria to be met shall be set out in the tendering document and if the tenderer does not meet any of these criteria, the tender shall be rejected** and..."

(Emphasis added)

**Reg. 90 (4) "The tender evaluation shall be consistent with the terms and conditions set forth in the tender documents and such evaluation shall be carried out using the**

**criteria explicitly stated in the tender documents".** (Emphasis added)

The Authority is of the considered view that, the successful tenderer's tender ought to have been rejected by the Respondent for failure to comply with the experience criterion which meant that they lacked the requisite technical capability.

With regard to the after sales services contention by the Appellant, that, the successful tenderer might have not met the said criterion for not being Canon's appointed agents. Thus, it is not possible for them to obtain maintenance manual and to access requisite training for their staffs. The Authority failed to comprehend the Appellant's argument that the successful tenderer ought to have Manuals and Training from the Manufacturer's for them to be able to offer after sales services since no evidence was tendered to substantiate their contentions.

The Authority revisited the successful tenderer's tender and observed that they had attached after sales services commitments for a period of one year.

In view of that finding, the Authority is of the view that the successful tenderer complied with that requirement.

With regard to financial capability, the Authority observed that, the Evaluation Committee had also indicated "**YES**" to the successful tenderer's tender, entailing that the criterion had been met. When asked by the Members of the Authority as to how did the successful tenderer meet the criterion, the Respondent submitted that they checked at the submitted Audited Accounts and their Bank Statements.

The Authority revisited the successful tenderer's tender and observed that indeed they attached Audited Accounts and Bank Statements. However, there was no guidance in the Tender Document indicating the modality and the use of the said Audited Accounts and Bank statements during the post qualification as provided under Clause

38:2 part III of the ITB. Thus, the Authority is of the considered view that the criterion was met.

The Authority's conclusion with regard to this sub issue is that the successful tenderer had no requisite technical capability as specified in the Tender Document.

**(iii) Whether the successful tenderer's manufacturer's authorizations were genuine.**

In order to resolve the conflicting arguments by parties, the Authority took cognisance of its functions as provided for under the Act. In so doing the Authority partly agrees with the Interested Party's submissions that in order to verify the authenticity of documents it needs assistance from other competent authorities. However, the Authority while reviewing the successful tenderer's tender, noted that, in one of the Manufacturer's Authorization attached, contained contradictory information which drew the attention of the Authority regarding its origin. The said Manufacturer Authorization was from Canon Europe Ltd with an address of the United Kingdom; while the

authorization came from Canon (ZA), meaning Canon South Africa. For purposes of clarity the Authority reproduces part of the said Authorization letter as hereunder;

**"Canon Europe Ltd**

**3 The Square Stockley Park  
Uxbridge Middlesex  
United Kingdom UB 11 1ET  
Tel: +44 208 588 8000  
Fax: +44 208 588 8001  
Website:www.canon-europe.com**

**WHEREAS**

We, **CANON ZA Inc.**, who **is an official manufacturer** of office equipment and printing solutions with plants in China, Japan and USA

do hereby authorize **ROYALMARK SUPPLIERS CO. Ltd.** Dar es Salaam to submit a bid the purpose of which is to provide the following Goods, supplied by us..."

**(Emphasis Added).**

When asked by the Members of the Authority of such glaring anomaly, the Respondent conceded that the said

Authorization had contradictions and if the said contradictions were noted during evaluation, the tender by the successful tenderer ought to have been rejected.

The Authority revisited further the Manufacturer's Authorization issued by Sollatec Kenya and observed that it bears the same address and it originated from the persons indicated in the address as hereunder;

**Sollatec Electronics Kenya Limited**

**P. O. Box 34246, Mombasa  
80118, Kenya.**

**Wireless Phone: +254 020 3501671/2**

**Wireless Fax: +254 (0) 733 615727**

**+254 (0) 733 610753 +254 (0) 722764643**

**E-mail: [sales@sollatek.co.ke](mailto:sales@sollatek.co.ke)**

**WHEREAS**

We, **SOLLATEC Electronics Kenya Ltd.**, who is an official manufacturer of UPS AND Surge Protective Systems equipment with plants in China, Japan, and USA

Do hereby authorize **ROYALMARK SUPPLIERS CO. Ltd.**

Dar es Salaam to submit a bid the purpose of which is to provide the following Goods, supplied by us”;

From the above observations the Authority failed to comprehend why the Authorization from Canon did contain different names while that from Sollatec bore the same names. The Authority observes further that on the face of it, there is doubt on the authenticity of the Authorization from Canon. Thus, had the Respondent been diligent enough, they would have noted and inquired the authenticity of the said Authorizations. To the contrary, they did not do so, for the reasons best known to themselves.

Accordingly, the Authority’s conclusion for this sub –issue is that the genuiness of one of the successful tenderer’s Manufacturer’s Authorization is doubtful.

**(iv) Whether the tender submitted by the successful tenderer complied with the specification provided in the Tender Document.**

To ascertain the parties' contentions with regard to this issue, the Authority revisited the Tender Document and the successful tenderer's tender. In so doing, the Authority noted some of the specifications provided in the successful tenderer's tender were different from those provided for in the Tender Document. For example; for Canon Photocopier as pointed out hereunder;

<b>Make</b>	<b>Submitted Specification</b>	<b>Required under ITB</b>
Canon Photocopier IR- 2530		
<b>Memory</b>	256 MB 512 MB	1.0 GB Standard 1.5 GB maximum

When asked by the Members of the Authority during the hearing of such a discrepancy, the Respondent submitted that, the successful tenderer could have complied with the specifications, as it was expected that they would

have enhanced the memories of the said photocopier prior to delivery.

The Authority failed to comprehend the Respondent's arguments since there was no evidence attached to the successful tenderer's tender to prove that they will provide some additional memory. Furthermore, there is nowhere in the Evaluation Report where such deficiencies and remedies had been pointed out.

The Authority is of the view that, even if that was the case, such deficiencies, if acceptable, could have been subject of pre-contract negotiations. However, Regulation 95(2) of GN.97/2005 prohibits negotiations which substantially change the specifications. Changes from 256MB to 1.0GB and from 512MB to 1.5GB respectively, are considered to be substantial changes.

The Authority finds the Respondent to have contravened Regulation 90(4) of GN No. 97 of 2005 already cited earlier on.

From the above findings the Authority's conclusion for this sub issue is that the tender submitted by the

successful tenderer did not comply with some of the specifications as provided for in the Tender Document.

Taking cognizance of the Authority's conclusions in sub issues above, the Authority's conclusion with regard to the second issue is that the award of the tender to the successful tenderer was not proper at law.

### **3.0 To what reliefs, if any, are the parties entitled to.**

Having analyzed the contentious issues in dispute, the Authority finds it prudent to consider prayers by the parties.

To start with, the Authority considered the Appellant's prayer for nullification of the award of the tender and the same be awarded to the rightful tenderer or to order re-tendering of the disputed tender. The Authority hereby nullifies the award of the tender to the successful tenderer. However, the Authority cannot grant that prayer for ordering award to another tenderer since it is outside its jurisdiction.

With regard to the prayer for compensation of Tshs 6,500,000/- and USD 86,120.40, the Authority is of the firm view that, the Appellant deserves compensation to the tune of Tshs. **500,000/-** as per the following break down;

- i) Appeal filling fees Tshs. 120,000/-
- ii) Transport fees Tshs. 50,000/-
- iii) Preparation of Appeal and its incidentals Tshs. 330,000/-

The Authority cannot grant other costs claimed by the Appellant since the law does not confer powers to the Authority to do so. The law allows this Authority to grant only actual costs incurred in pursuit of Appeal and not otherwise.

The Authority also considered the prayers by the Respondent and the successful tenderer that, the Appeal be dismissed with costs.

The Authority does not agree with them as the submissions made by the Appellant have some merit.

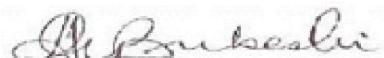
Accordingly, the Authority partly upholds the Appeal and orders the Respondent to;

- **re-start the tender process afresh in observance of the law; and**
- **to compensate the Appellant the sum of Tshs. 500,000/= only**

Last but not least, the Authority is making this decision fully cognizant of its powers vested under the Act. It is our ardent wish that the relevant oversight bodies will act and take appropriate measures to some of the contentions made by the Appellant.

Right of Judicial Review as per Section 85 of the PPA/2004 explained to parties

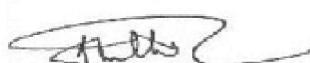
Decision delivered in the presence of the Appellant and  
the Respondent this 27<sup>th</sup> September, 2013.



JUDGE (rtd) A. BUBESHI

**CHAIRPERSON**

**MEMBERS:**

1. MR. K. M. MSITA..... 
2. MRS. R. A. LULABUKA 
3. MRS. N. S. INYANGETE..... 