IN THE

PUBLIC PROCUREMENT APPEALS AUTHORITY

AT BUKOBA

APPEAL CASE NO. 125 OF 2012

BETWEEN

ABDULKARIM MEZA.....APPELLANT

AND

BUKOBA MUNICIPAL COUNCIL .....RESPONDENT

DECISION

CORAM

1. Hon. A.G. Bubeshi, J. (rtd) -Chairperson
2. Mr. H.S. Madoffe -Member
3. Ms. E.J. Manyesha -Member
4. Ms. E.V.A. Nyagawa -Ag. Secretary

SECRETARIAT

Ms. V. S. Limilabo - Legal Officer

FOR THE APPELLANT

Mr. Abdulkarim Meza

FOR THE RESPONDENT

1. Mr. Josephat Kyebyara – Agricultural & Livestock Officer
2. Mr. Peter Gunda – Civil Engineer
3. Mr. Martin Kamala – Civil Engineer II
4. Ms. Julieth J. Homuye – Accountant II
5. Mr. Charles R. Kafumu – Senior Technician

This decision was scheduled for delivery today 15th August, 2012 and we proceed to deliver it.

The Appeal at hand was lodged by **Mr. Abulkarim Meza** (hereinafter to be referred to as **"the Appellant")** against **Bukoba Municipal Council (**hereinafter to be referred to as **"the Respondent")**.

The said Appeal is in respect of tender No LGA/034/2012/2013/NC/01 for Outsourcing Revenue Collection to Agents which had ten Lots, but this Appeal centres on Lot VI for Collection of Motor Vehicle Parking Fees and Lot VII which is for Parking Fees at the Central Bus Stand (hereinafter to be referred to as "**the tenders**"). However, reference will be made to Lot IV for Loading and Offloading Levy at Market Places which was awarded to the Appellant.

According to the documents submitted to this Authority as well as oral submissions during the hearing, the facts of this Appeal may be summarized as follows:

On 15th May, 2012, the Respondent *vide* Majira newspaper dated 15th May, 2012, invited tenders for Outsourcing Revenue Collection to Agents on different sources for the Financial Year 2012/2013. The said advertisement was also posted on the Municipal Council's Notice Board.

That, the said tender was divided into ten lots namely;

(i) Hotel levy;
(ii) Abattoir Slaughter Levy (Rwamishenye);
(iii) Service Levy;
(iv) Loading and Offloading Levy at Market Places;
(v) Fish Landing Facilities at Forodhani;
(vi) Motor Vehicle Parking Fees;
(vii) Parking Fees at the Central Bus Stand;
(viii) Permit Fees for Billboards, Posters and Hoarding;
(ix) Fees for the Registration of Passengers' Motor Vehicles; and
(x) Penalty Levy for environmental pollution.

The deadline for submission of the tenders was set for 15th June, 2012, whereby the tenders were opened and the read out prices in respect of Lots IV, VI and VII were as follows:

LOT IV – FEES FOR LOADING AND OFFLOADING AT MARKET PLACES

S/N	TENDERER	QUOTED PRICE PER YEAR - TSHS.
1.	Super Envirotech Co. Ltd	**126,000,000/=**
2.	Abdul Karim Meza	**145,800,000/=**

LOT VI - PARKING FEES

S/N	TENDERER	QUOTED PRICE PER YEAR - TSHS.
1.	Super Envirotech Co. Ltd	**30,000,000/=**
2.	Abdul Karim Meza	**36,600,000/=**

LOT VII – PARKING FEES AT THE CENTRAL BUS STAND

S/N	TENDERER	QUOTED PRICE PER YEAR – TSHS.
1.	Amua Investment Ltd	**144,360,000/=**
2.	Super Envirotech Co. Ltd	**156,000,000/=**
3.	Abdul Karim Meza	**162,000,000/=**

The Evaluation Committee evaluated the tenders and recommended the awards for Lots IV, VI and VII to be made to the following tenderers:

LOT NO	PROPOSED AWARD	ANNUAL COLLECTION - TSHS.
LOT IV	Mr. Abdul Karim Meza	**145,800,000/=**
LOT VI	Super Envirotech Co. Ltd	**30,000,000/=**
LOT VII	Super Envirotech Co. Ltd	**156,000,000/=**

The Tender Board meeting held on 25th June, 2012 reviewed the Evaluation Report and approved the award recommendations in respect of, *inter alia*, Lots IV, VI and VII.

On 27th June, 2012, the Respondent vide a letter referenced BMC/P. 40/9/VOL.II/ 93 communicated their acceptance of the Appellant's offer in respect of Lot IV at a sum of Tshs. 145,800,000/= per annum. However, no feedback was given with regard to the tender results for Lots VI and VII.

On 03rd July, 2012, the Appellant vide a letter with no reference number, wrote to the Public Procurement Appeals Authority (hereinafter to be referred to as "**the Authority**") complaining on their disqualification in Lots VI and VII.

On 09th July, 2012, the Appellant wrote to the Respondent requesting to be informed on the reasons for their disqualification in Lots VI and VII.

On 13th July, 2012, the Respondent communicated the reasons for the disqualification of the Appellant's tenders in Lots VI and VII.

Being dissatisfied with the Respondent's decision, on 17th July, 2012, the Appellant filed an Appeal to this Authority.

SUBMISSIONS BY THE APPELLANT

The Appellant'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 Appellant tender's met all the criteria set out in the tender advertisement and their offer for Lot VI was Tshs. 3,500,000/= per month and Tshs. 13,500,000/= per month for Lot VII while the Successful Tenderer had quoted Tshs. 3,000,000/= and Tshs. 13,000,000/= respectively per month for the two Lots.

That, on 24th June, 2012 the Appellant met Eng. Stephen Ninzihilwa a member of the Respondent's Tender Board who informed the Appellant that his tenders in Lots IV, VI and VII were successful but only one would be awarded to him because the Mayor had interests in the other two Lots. Later, Eng. Ninzihilwa called the Appellant again

and informed him that his tenders for Lots VI and VII were not properly filled.

That, on 29th June, 2012, the Respondent's Secretary called the Appellant requesting him to collect the award letter in respect of Lot IV.

That, he decided to see the Mayor but was unable to do so and instead saw the Deputy Mayor. According to the Appellant, the Deputy Mayor had informed the Acting Municipal Director about the matter and urged them to ensure the tenders are awarded fairly so as to avoid unnecessary complaints. However, the Deputy Mayor's advice was allegedly ignored and the Respondent proceeded to award the tenders in dispute to one SUPER ENVIROTECH CO. LTD.

That, according to Section 66(5) (sic) of the Public Procurement Act (hereinafter to be referred to as **"the Act"**) the Respondent was required to notify the Appellant about the tender award in respect of Lots VI and VII.

That, disqualifying the Appellant's tenders for quoting sums above the Respondent's estimates was against Section 67(1) and (2) of the Act. By so doing, the Respondent was not consistent, in that, in tenders for Financial Year 2011/2012 the Appellant had quoted **Tshs. 102,000,000/=** per annum compared to the Respondent's estimates of **Tshs. 48,000,000/=** per annum and that particular tender was awarded to him.

That, Clause 9 of the Instructions to Tenderers (hereinafter to be referred to as **"ITT")** cannot be used as a major criterion during evaluation process because not all tenderers had experience in a particular assignment. When they tendered for the Financial Year 2011/2012 the Appellant's only experience was that acquired when he was employed for similar assignments in Dar es Salaam and Tanga, but he managed to collect and remit the awarded sum without failure.

That, if the reason for disqualifying his tenders was quoting higher prices, the Appellant would not have been

awarded the tender for Lot IV in which his quoted price was 15.08% higher than the Respondent's estimated collection.

That, the errors found in the Appellant's tenders were minor and therefore could not have resulted in a disqualification as per Regulation 90(11)(b) of the Public Procurement (Goods, Works, Non-Consultant Services and Disposal of Public Assets by Tender) Regulations (hereinafter to be referred to as **"GN. No. 97/2005"**).

That, the Respondents argument that the Appellant had no proper address is not tenable, in that, the notification of the tender results for Lot IV was availed to him.

Finally the Appellant prayed for the following orders;

- the decision of the Respondent to award tenders for Lots VI and VII to the Super Envirotech Co. Ltd be nullified;

- the Appellant be pronounced the winner for Lots VI and VII; and

- the Respondent be ordered to compensate the Appellant a sum of Tshs. 9,000,000/= being general damages for the inconvenience caused and injury to his health as a result of the Respondent's unfair award of tenders in Lots VI and VII.

REPLIES BY THE RESPONDENT

The Respondent's arguments were preceded by a Preliminary Objection to wit;

that the Appeal is improperly before the Authority contrary to Regulation 111 of GN. No 97/2005.

In justifying their Preliminary Objection the Respondent argued that, the Appellant had erred in law by lodging an appeal directly to the Authority, as they were obliged to channel their complaints to the Accounting Officer as the

first review level pursuant to Regulation 111 of GN. No. 97 of 2005.

Without prejudice of the above objection, the Respondent's written and oral submissions on the merits as well as responses from questions raised by the Members of the Authority during the hearing, may be summarized as follows:

That, the criteria for evaluation of the tenders included the following:

- a tenderer should not have unsettled bills or pending litigation with the Respondent as per Clause 2 of the ITT;

- a tenderer should indicate a realistic monthly cash collection analysis as per Clause 5 of the ITT; and

- a tenderer should indicate his experience relating to the specific source of revenue to be collected by

giving contacts of previous employers as per Clause 9 of the ITT.

That, based on the above mentioned criteria the tenders for Lots VI and VII were awarded to Super Envirotech Co. Ltd as he had met all the criteria.

That, Super Envirotech Co. Ltd had submitted a cash collection analysis which was slightly higher than the internal estimates by only 8.3% which was within the threshold acceptable to the Respondent.

That, the tenders submitted by Super Envirotech Co. Ltd did not contain any material deviation which would have attracted a penalty pursuant to Regulation 90(13) of the GN. No. 97 of 2005.

That, the Appellant was unsuccessful in Lots VI and VII due to the following reasons:

- they did not submit any evidence to show their experience;

- their tender was not sealed and was also improperly addressed contrary to Clause 12 of the ITT. As a result of these omissions their tender was penalized as per Regulation 90(13) of the GN. No. 97 of 2005; and

- their quoted prices for Lots VI and VII exceeded the Respondent's estimates by 12.5% and 26.2% respectively, which was more than the 10% limit acceptable to the Respondent.

That, the Successful Tenderer for Lots VI and VII had only exceeded the estimates by 8% and 3.4% respectively, which was within the range acceptable to the Respondent.

That, they could not award the tenders to the Appellant as they had experience with other tenderers who had

quoted higher prices and upon being awarded the tenders they fail to remit the awarded sum, hence causing loss to the Respondent.

Finally the Respondent prayed for the dismissal of the Appeal in its entirety.

ANALYSIS BY THE AUTHORITY

Having gone through the documents submitted and having heard the oral submissions from parties, the Authority is of the view that, this Appeal is centred on the following issues;

- **whether the Appeal is properly before the Authority;**
- **whether the Appellant was unfairly disqualified;**

- **whether the awards of Lots VI and VII to Super Envirotech Co. Ltd are proper at law; and**

- **to what reliefs, if any, are the parties entitled to.**

Having identified the issues in dispute the Authority proceeded to resolve them as follows:

1.0 Whether the Appeal is properly before the Authority

In their submissions on the Preliminary Objection raised, the Respondent claimed that, the Appeal is improperly before this Authority for the Appellant's failure to observe the dispute resolution procedures. They claimed further that, it was wrong for the Appellant to lodge an appeal directly to this Authority instead of submitting his complaints first to the Accounting Officer, then to the

Public Procurement Regulatory Authority (hereinafter to be referred to as **"PPRA"**) and thereafter to the Authority. In reply thereof the Appellant submitted that, despite writing to the Accounting Officer they did not receive any response.

The Authority wishes to state that, once a procurement contract has entered into force by virtue of Section 55(7) of the Act, any complaint which arises thereafter is lodged directly to this Authority in accordance with Section 82(2)(a) of the Act. For purposes of clarity the Authority reproduces the said provisions hereunder:

S. 55(7) "The procurement contract shall enter into force when a written acceptance of a tender has been communicated to the successful supplier, contractor or consultant." (Emphasis added)

S. 82(2) **"**A supplier, contractor or consultant entitled under section 79 to seek review **may submit a complaint or dispute to the Public Procurement Appeals Authority**:-

(a) if the complaint or dispute cannot be submitted or entertained under section 80 or 81 because of entry into force of the procurement contract and provided that the complaint or the dispute is submitted within fourteen days from the date when the supplier, contractor or consultant submitting it became aware of the circumstances giving rise to the complaint or dispute or the time when the supplier, contractor or consultant should have become aware of those circumstances;" (Emphasis added)

Relating the above quoted provisions to the Appeal at hand, the Authority observes that according to the documents availed by the Respondent, the procurement contracts pertaining to Lots VI and VII entered into force

on 27th June, 2012, when the awards thereof were communicated to the successful tenderer, namely, Super Envirotech Co. Ltd *vide* letters referenced BMC/P.40/9/VOL.II/94 and BMC/P.40/9/VOL.II/95, respectively. In this case therefore, by lodging his complaint directly to this Authority the Appellant was correctly exercising his right under Section 82(2)(a) of the Act.

In view of the above analysis the Authority's conclusion on the first issue is that, the Appeal is properly before it.

2.0 Whether the Appellant was unfairly disqualified

In resolving this issue the Authority deems it necessary to review the reasons for disqualifying the Appellant's tenders in Lots VI and VII as expressed in the Respondent's letter referenced BMC/P.40/VOL XII/109 dated 13th July, 2012, read together with the Evaluation Report. The said reasons are that:

- the prices quoted by the Appellant in the two lots were higher by more than 10% compared to the Respondent's estimates and that his tenders were not the lowest evaluated as per PPRA's Procurement Journal dated 19th October, 2010;

- the Appellant did not have the requisite experience; and

- the Appellant's tenders for Lots VI and VII had minor deviations.

In reviewing the said reasons, the Authority will analyze each of them in tandem with the Appellant's submissions thereof in order to ascertain if they are backed by the applicable law and the Tender Document.

(a) The prices quoted by the Appellant in the two lots were higher by more than 10% compared to the Respondent's estimates

In their submissions the Respondent argued that, PPRA's Journal (Jarida la Makala za Ununuzi) dated 19th October, 2010, guides on the procedure for determining the lowest evaluated tender, in that, offers for revenue collection should not exceed 10% of the estimated collection. According to the Respondent, any offer which exceeds the estimated sum for over 10% should not be accepted. The Respondent's submissions on this ground were disputed by the Appellant for the following reasons:

- That, if PPRA's guidance so provide and if the Respondent had observed it to the letter, why would they award Lot IV to the Appellant while the quoted price thereof exceeded the Respondent's estimates by 15.8%.

- Had the said criterion been applied rationally and consistently, why would the Appellant's offer in respect of Lot VII which exceeded the Respondent's estimates by 12.3% be rejected while that of Lot IV which exceeded the estimates by 15.8% was awarded to the Appellant.

- He was the revenue collector in respect of Lot IV for the Financial Year 2011/2012 whereby he was awarded the tender at his quoted price of Tshs. 102,000,000/= per annum compared to the Respondent's estimates of Tshs. 48,000,000/= per annum. He wondered, if the Respondent was complying with PPRA's Procurement Journal of 19th October, 2010, why was he awarded the said tender despite the over 200% price difference.

Having summarized the submissions by parties on this point, the Authority concurs with the Appellant that the Respondent's conduct leaves a lot to be desired in the following respect:

- The said criterion was not applied consistently in Lots IV, VI and VII. For instance, in Lot IV the 10% threshold was disregarded in favour of the Appellant, while in Lots VI and VII it was applied to his detriment.

- It was wrong for the Respondent to apply the said criterion as it was neither contained in the Tender Document nor known to the tenderers contrary to Regulation 90(4) of GN. No. 97 of 2005 which provides as follows:

> "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)

> Based on the above quoted provision the Authority is of the view that, evaluation of tenders should solely be based on the criteria contained in the tender document and not otherwise. It was therefore wrong for the Evaluators to impose a criterion which was unknown to the tenderers.

In view of the aforegoing, the Authority is satisfied that it was wrong for the Respondent to impose the criterion in dispute as it was not provided in the Tender Document.

The Authority considered the Respondent's contention that they were obliged to award the tender to the lowest evaluated tender whose price did not exceed 10% of the Respondent's estimates. The Authority noted that, the Respondent failed to produce PPRA's document which they relied upon or explain how the lowest evaluated tender was determined in the tender for revenue collection.

The Authority understands the Respondent's dilemma as the law has a lacunae, in that, in revenue collection the determination thereof should have been on the highest evaluated tender as opposed to the lowest evaluated tender. However, in such a situation logic dictates that the interest of a procuring entity is to collect more revenue, which is echoed in their Statement of Replies, but not supported by their conduct as evidenced in the manner the tenders under Appeal were awarded. The Authority further observes that, the Respondent being a procuring entity should create a habit of seeking guidance from the Regulator, namely, PPRA whenever they face difficulties ranging from interpretation of the law to its application. That said, the Authority is of the firm view that the **"lowest evaluated tender"** principle was not applicable in the tenders under Appeal.

In view of the above findings, the Authority is of the view that the Respondent erred in introducing an evaluation criterion which was not contained in the Tender

Document. Hence, this should not have been the basis for awarding or rejecting tenders.

(b) The Appellant did not have the requisite experience

According to the Respondent, despite quoting higher prices than the other tenderers in Lots VI and VII, the Appellant was not awarded the tenders because he had no experience on the types of revenues for the said Lots and that he did not attach Certificates to prove that he had executed similar contracts. They further contended that, the experience required was for each specific Lot independently and that they have experience with some tenderers who quote higher prices but fail to remit the awarded sum once execution commences.

The Appellant on his part submitted that, he has general experience in revenue collection as he was previously employed in similar assignments in Dar es Salaam and Tanga. Furthermore, he had successfully performed a

previous contract and remitted the agreed revenue to the Respondent for Lot IV for 2011/2012 Financial Year despite the price difference between the quoted price and the Respondent's estimates being in excess of 200%.

In analyzing the validity of the contesting arguments by parties the Authority reviewed Clause 9 of the ITT which reads in Kiswahili as follows:

"Mwombaji lazima ataje na **kuonesha uzoefu wake wa kukusanya mapato** na aoneshe Sehemu mbalimbali na anuani za sehemu alizowahi kutoa huduma hiyo kwa ufanisi." (Emphasis added)

Literally translated, the above quotation means:

"The Applicant shall state and show his experience in revenue collection and should indicate the various areas as well as employers and their

addresses where he had provided such services successfully." (Emphasis supplied)

According to the Respondent's oral submissions during the hearing, the words **"revenue collection"** and **"such service"** should have been read together and interpreted to connote the type of tender (Lot) that was being sought. They therefore contended that the Appellant was required to have experience in the specific Lots he had applied for and not otherwise. The Authority does not accept the Respondent's interpretation, in that, their undated tender advertisement contained ten different Lots, all of which were on revenue collection under the title **"VYANZO VYA MAPATO"** in Kiswahili which means **"Sources of Revenue"** in English. In this case, the term **"revenue collection"** provided under Clause 9 of the ITT does not specifically imply each one amongst the ten listed sources, depending on the nature of the Lot being tendered for as it may be referring to the said title.

Furthermore, during the hearing the Respondent was asked to clarify the rationale behind requesting the tenderers to have specialized experience in the particular sources of revenue they had tendered for, as it was the view of the Authority that the extent and nature of revenue collection assignment were largely similar. The Respondent could provide neither justification for such a requirement nor unique qualities for each source of revenue collection.

The Authority noted that Clause 9 of the ITT was vague as it did not indicate the minimum length of the experience required. The Authority further noted that, the Appellant had analyzed how he would collect the quoted prices in both Lots VI and VII by, inter alia, indicating the number of various motor vehicles involved depending on the different rates chargeable. Had the Respondent found the said analysis to be exaggerated, as they claim, they should have pointed out the overestimation involved.

The Authority considered the Appellant's submission that they had successfully executed the contract for Lot IV for the Financial Year 2011/2012 despite the huge difference as already stated earlier on. The Authority noted that, the Respondent did not dispute that fact and they could not explain why they did not consider the Appellant's great achievement in the previous contract as an indication that the estimates could be wrong. Much as the Authority shares the Respondent's reluctance in awarding such tenders to too high prices offered, but this has been contributed by laxity on their part, as per their own admission during the hearing that in some previous contracts the awarded tenderers had commenced revenue collection prior to depositing the required three months collection and thereafter breached their contracts.

The Authority emphasizes that experience is amongst the mandatory requirements under Regulation 10(4) of GN. No 97 of 2005 which states as follows:

Reg. 10(4) "**All tenders shall include the following information:**

(b) details of the experience and past performance of the tenderer …" Emphasis supplied)

Based on the above quoted provision, the Respondent was right to require the tenderers to show their past experience, but the wording of Clause 9 of the ITT was neither explicit nor exhaustive contrary to Section 63(2) of the Act which requires the content of the tender document to be precise and explicit. The said section provides as follows:

S. 63(2) "The tender documents shall be worded so as to permit and encourage competition and such documents **shall set forth clearly and precisely all the information necessary** for a prospective tenderer to prepare tender for the

goods and works to be provided." (Emphasis supplied)

With regard to the Respondent's contention that the Appellant did not attach certificates issued after completion of the contract as proof of their experience, the Authority noted that they had attached copies of the contract and award letter from the Respondent for collection of loading and offloading fees for Financial Year 2011/2012. The Authority is concerned by the Respondent's double standards, in that, the tenders submitted by the Successful Tenderer, namely Super Envirotech Co. Ltd contain documents similar to those attached in the Appellant's tender and no such certificates were submitted. Since the Tender Document did not specify the nature or duration of the experience involved, the abovementioned documents attached in the tenders submitted by the Appellant met the minimum requirements. Thus, the Authority is of the considered view that, the Appellant had the requisite experience on revenue collection.

In view of the analysis the Authority is of the settled view that, the Appellant had the requisite experience in revenue collection.

(c) The Appellant's tenders for Lots VI and VII had minor deviations

The Authority noted that, both the Evaluation Report as well as the Respondent's oral and written submissions have repeatedly indicated that the Appellant's tenders for Lots IV, VI and VII had minor deviations and were **"penalised"** in accordance with Regulation 90(13) of GN. No. 97 of 2005. The said provision reads:

> **"Penalties for non-material deviation from the tender requirements shall be expressed as a monetary addition to the tender price which may include the cost of making good**

deficiencies in compliance with the tender specifications." (Emphasis supplied)

During the hearing the Respondent was requested to explain their understanding of the above quoted provision and clarify how it was applied in **"penalising"** the Appellant's tender. However, no explanation was forthcoming. The Authority noted that, the omissions in the Appellant's tenders were in respect of the following:

- he submitted the original tenders without a copy thereto as it was required;

- the envelope containing the tenders was not sealed and was also improperly addressed; and

- he did not attach proof of their past experience.

The Authority noted that, the omissions pertaining to the first two bullets above were treated as minor deviations a fact which is expressly stated in the Evaluation Report. However, during the hearing the Respondent could not explain why they kept on carrying forward the said omissions from one stage of the evaluation process to the other and later in their replies to the Appellant's Statement of Appeal. The Authority is of the view that, once a deviation is considered to be minor it ceases to have any effect on the evaluation of that particular tender.

With regard to the claim that the Appellant did not attach evidence of their past experience, having perused the Appellant's tenders for Lots VI and VII the Authority found that this claim is not true. The Appellant had actually attached in each of the two tenders a copy of the award letter from the Respondent referenced BMC/P.40/9/VOL.II/185 dated 28th June, 2011, for the tender for the Financial Year 2011/2012.

Having analysed the third ground for the disqualification of the Appellant, the Authority is satisfied that there were minor omissions which did not jeopardize the Appellant's tenders.

Having reviewed each of the three reasons given by the Respondent for disqualifying the Appellant's tenders in Lots VI and VII and having found that all of them were not justified, the Authority is satisfied that the Appellant was unfairly disqualified.

3.0 Whether the awards of Lots VI and VII to Super Envirotech Co. Ltd are proper at law

The Appellant averred that his quoted prices for Lots VI and VII were the highest compared to the Successful Tenderer for both Lots, namely, Super Envirotech Co. Ltd. Most importantly, the Appellant alleged to have been informed by a member of the Respondent's Tender Board

that he had won the said two Lots but he would not be awarded the tenders because the Mayor and the Deputy Mayor had vested interests in them. The Authority is appalled that, despite such serious allegation being levelled in writing by the Appellant, the Respondent did not deem it prudent to address the same be it orally or in their written replies.

The Authority is concerned that, in his Statement of Appeal the Appellant did not only expose the Respondent's Official who is a member of the Tender Board but also disclosed the information that was relayed to him on the deliberations of the Tender Board. Surprisingly, upon being asked to comment on the measures that have been taken to address the said allegation, the Respondent's representatives who attended the hearing claimed that they were not aware of such allegations as they were seeing them for the first time. Upon being given a copy of the Appellant's Statement of Appeal which was used by the Respondent to prepare their Written Replies, they lamely stated that

the matter was within the jurisdiction of the Municipal Executive Director. Despite the fact that, the Appellant did not produce any evidence to corroborate his statement, the Respondent's conduct towards the said allegations, leaves much to be desired. They showed total indifference to unbecoming conduct. It is the ardent hope of this Authority that the relevant organs will look into this matter with the seriousness it deserves.

In order to address the Appellant's concern that there was foul play in awarding the two Lots, the Authority deemed it necessary to examine the tenders submitted by Super Envirotech Co. Ltd in Lots VI and VII so as to ascertain whether they met all the criteria as it was stated in the Evaluation Report and maintained by the Respondent during the hearing. Having perused the said documents the Authority discovered that the said Successful Tenderer had tendered as **"Super Envirotech Co. Ltd"** which is a mere business name registered under the Business Names Registration Act, Cap. 213 of the Revised Laws. The Authority is of the settled view

that, a business name is not a legal personality and therefore does not have the capacity to enter into contracts or to sue or be sued. Thus, the Respondent grossly erred in awarding the tenders for Lots VI and VII to Super Envirotech Co. Ltd as legally speaking, there was no award.

Having found that the purported Successful Tenderer is not a legal personality, which makes the said tenderer ineligible to tender, the Authority decided not to review further the tender process as it will be a mere academic exercise.

In view of the above findings, the Authority's conclusion on the third issue is that, the award of Lots VI and VII to Super Envirotech Co. Ltd are not proper at law.

4.0 To what reliefs, if any, are the parties entitled to

Having resolved the issues in dispute and found that the disqualification of the Appellant's tenders for Lots VI and VII was unfair and having established that the award of the said Lots to Super Envirotech Co. Ltd was a nullity in the eyes of the law, the Authority proceeded to review the prayers by parties.

The Authority considered the Appellant's first prayer that, the Respondent's decision to award tenders for Lots VI and VII to Super Envirotech Co. Ltd be nullified, and observes that as it has already been established that the award of the said Lots was null and void, there is nothing for this Authority to annul. With regard to the second prayer that the tender be awarded to the Appellant, owing to the shortfalls detected in the evaluation process as well as the content of the Tender Document itself, the Authority cannot grant this prayer and orders the Respondent to address properly the shortfalls pointed out

in this decision before re-tendering for Lots VI and VII. As regards the Appellant's prayer for compensation of Tshs. 9,000,000/= for medical impairment caused by the effects of this Appeal, the Authority cannot grant the prayer for want of jurisdiction. That said, the Authority orders each party to bear their own costs.

The Authority also considered the Respondent's prayer that the Appeal be dismissed in its entirety and rejects it as the Appeal has merit.

On the basis of the aforesaid findings and conclusions, the Authority upholds the Appeal and orders as follows:

- the Respondent to restart the tender process in respect of Lots VI and VII in observance of the law; and

- each party to bear their own costs.

Right of Judicial Review as per Section 85 of the Act explained to parties.

Decision delivered in the presence of the Appellant and the Respondent this 15th August, 2012.

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JUDGE (rtd) A. BUBESHI

CHAIRPERSON

MEMBERS:

1. MR. H. S. MADOFFE .....

3. MS. E. J. MANYESHA .....