

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 21 OF 2022-23

BETWEEN

M/S DE LA RUE INTERNATIONAL LIMITED.....APPELLANT

AND

BANK OF TANZANIARESPONDENT

DECISION

CORAM

- | | |
|-------------------------------------|---------------|
| 1. Hon. Justice (Rtd) Sauda Mjasiri | - Chairperson |
| 2. Adv. Rosan Mbwapbo | - Member |
| 3. Eng. Stephen Makigo | - Member |
| 4. Mr. James Sando | - Secretary |

SECRETARIAT

- | | |
|------------------------|------------------------------|
| 1. Ms. Florida Mapunda | - Deputy Executive Secretary |
| 2. Ms. Violet Limilabo | - Senior Legal Officer |

FOR THE APPELLANT

- | | |
|------------------------|-----------------------|
| 1. Adv. Brian Mambosho | - Clyde & Co Tanzania |
| 2. Mr. David Aldridge | - Country Director |

FOR THE RESPONDENT

- | | |
|---------------------|------------------------|
| 1. Mr. Edwin Webiro | - State Attorney (OSG) |
|---------------------|------------------------|

- | | |
|----------------------|-------------------------------|
| 2. Mr. Deodath Mushi | - Senior State Attorney (BOT) |
| 3. Mr. Clay Apiyo | - Manager Procurement |
| 4. Mr. John Kayombo | - Assistant Manager Currency |

M/S De La Rue International Limited (hereinafter referred to as "**the Appellant**") has preferred an Appeal against the **Bank of Tanzania** commonly known by its acronym as "**BOT**" (hereinafter referred to as "**the Respondent**"). This Appeal arises from Pre-qualification of Suppliers Tender No. PA/082/2021-22/HQ/G/400 LOT 1 for Re- Printing Banknotes at the Bank of Tanzania Sub-Head Office Dar-es Salaam (hereinafter referred to as "**the Pre-qualification**").

According to the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "**the Appeals Authority**") the background of this Appeal may be summarized as follows: -

On 1st July 2022, the Respondent via the Tanzania National e-Procurement System (TANePS) invited applicants to submit their applications. The deadline for submission of applications was 8th July 2022. By the deadline, eight (8) applications were received, including that of the Appellant.

The applications were then subjected to evaluation and after completion, the Evaluation Committee recommended a shortlist of four applicants which it found to have complied with the requirements of the Pre-qualification Document. The shortlisted applicants were: - M/S Orell Fussli AG, M/S Polska Wytwornia Papierow Wartosciowych Spolka Akcyjna, M/S



Oberthur Fiduciaire SAS and M/S Giesecke+ Devrient Currency Technology GmbH. The list of shortlisted applicants was submitted to the Tender Board at its extra ordinary meeting held on 28th October 2022. After deliberations, the Tender Board approved the recommended list of shortlisted applicants.

The result of the Pre-qualification process was communicated to all applicants through a letter dated 21st November 2022. Particularly, the said letter informed the Appellant that it has not been shortlisted due to its failure to meet financial capability commitment requirement. The letter indicated that the Appellant submitted a letter from its bank which lacked a commitment statement to guarantee it during tendering and execution process.

Dissatisfied with its disqualification, on 28th November 2022 the Appellant applied for administrative review to the Respondent. Upon receipt of the Appellant's application for the administrative review, on 1st December 2022, the Respondent suspended the Pre-qualification process pending the determination of the complaint. On the same date the Respondent appointed an independent review panel to review the Appellant's complaint.

After reviewing the matter, the independent review panel came up with the findings that the Appellant was fairly disqualified for failure to comply with the requirement of Section VII Item 14(i) of the Summary of the Evaluation Criteria on Financial Situation and Performance of the Pre-qualification Document (pg54) (hereinafter



referred to as "**Item 14(i)**"). The independent review panel's report indicated that the Appellant's bank failed to state in clear terms that "the bank will support it by issuing a line of Credit Facility at the magnitude to be determined during the tendering process." The independent review panel therefore concluded that the Appellant's disqualification was justified. The finding of the independent review panel was communicated to the Appellant through the Respondent's decision issued on 8th December 2022. The said decision stated clearly that the Appellant's application for the administrative review was found to be devoid of merits as the Appellant was fairly disqualified and therefore the application was dismissed.

Aggrieved further, on 19th December 2022, the Appellant lodged this Appeal to the Appeals Authority.

Upon being served with the statement of Appeal, the Respondent in response thereof raised a Preliminary Objection (PO) on two points of law to wit: -

- (a) *"The Appellant's grounds of Appeal stated in paragraph 3 (i) (a, b, c) (ii), (iii) and (iv) are incompetent before this Appeals Authority for being premature as the same have never been part of its application for administrative review contrary to the requirements of Regulation 105 and 106 of the Regulations. Concisely, these provisions require inter alia, the tenderer who is aggrieved with the decision of the procuring*



entity to submit its complaints for administrative review to the procuring entity before submitting the same to the Appeals Authority.

- (b) *The Appellant has cited the wrong provisions of the law in its second ground of Appeal by citing Regulation 280 (8) of the Regulations as the enabling provision for disqualification of their application during the pre-qualification stage while the particular provision deals with expression of interest for consultancy tenders'.*

At the commencement of the hearing the Respondent withdrew the preliminary objection raised. Parties agreed to proceed with the merits of the Appeal and the following issues were framed:-

1.0 Whether the disqualification of the Appellant's application at the Pre-qualification process was justified;

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

SUBMISSIONS BY THE APPELLANT

In this Appeal the Appellant was represented by Mr. Brian Mambosho, learned Advocate. The learned counsel was accompanied by Mr. David Aldridge, the Appellant's Country Director. The learned advocate commenced his submissions on the first issue by stating that the cause of action for this Appeal arose after the Appellant received results of Pre-qualification process on 21st November 2022. According to the learned



counsel, the Appellant was disqualified for failure to comply with Item 14(i).

The learned counsel disputed the reason given for Appellant's disqualification by stating that the financial capability commitment letter dated 27th June 2022 attached to the Appellant's application met the requirement of Item 14(i) in that:-

- (a) It specifically referred to the tender for Re-Printing and supply of Banknotes at the Bank of Tanzania Sub-Head office Dar-es Salaam;
- (b) It specifically stated that it was available to the De La Rue Group and can be used for, amongst other things, working capital and general corporate purpose; and
- (c) Its wording extends to the tendering and execution process of the tender which is the core business of the Appellant and therefore squarely a commercial purpose.

The learned counsel submitted further that the commitment letter dated 27th June 2022 offered to extend the line of credit facility of British Pound Sterling Two Hundred Seventy Five Million (£ 275,000,000.00). The sum of £ 121,492,416.39 was available for utilisation as at the date of the letter. The learned counsel expounded that the Appellant's company is a leading firm in banknotes printing in Africa and other parts of the world. Thus, the company is financially stable.



The learned counsel submitted that Item 14(i) required applicants to submit commitment letters from their respective banks which would provide assurance that they would be guaranteed during the tendering and execution of the contract. Furthermore, according to the Appellant, the banks' commitment letters were intended to assist the Respondent in substantiating the financial position of the applicants. The Appellant's financial position was clearly indicated in the three years audited financial statements which were submitted to the Respondent in compliance with Item 14(iii).

Moreover, the Appellant indicated current commitments, future commitments and how they would be financed in compliance with Item 16(i) of the Summary of the Evaluation Criteria on Financial Situation and Performance of the Pre-qualification Document (pg55) (hereinafter referred to as "**Item 16(i)**"). The information provided demonstrated the Appellant's financial position. The learned counsel insisted that the Appellant submitted tangible evidence of its financial status as required by the Pre-qualification Document. Therefore, the Respondent's act of disqualifying the Appellant was not justified.

The learned counsel submitted further that there was no specific format which would have been used by the applicants to fill in the information required under Item 14(i). The learned counsel stated that the requirement under Item 14(i) was not specific as the Respondent contended. Thus, in complying with it the Appellant

A handwritten signature in dark ink, appearing to be 'J. J. N.' or similar, located at the bottom center of the page.

attached a commitment letter from its bank which indicated that it was to cover a working capital and general corporate purposes.

According to Oxford Dictionary the term working capital has been defined to mean the amount of a company's current assets less current liabilities. That is the current capital required to fulfill the daily trading operation of a business. The learned counsel expounded that the Appellant's key business is printing of banknotes and that is the only general purpose upon which the bank commitment letter was issued. The learned counsel submitted further that, if the Respondent failed to understand the meaning of the term general corporate purposes it ought to have sought for clarification from the Appellant.

The learned counsel submitted that Clause 24.1 of the Instruction to Applicants (ITA) provides the Respondent with the discretion to waive minor deviations which do not materially affect technical capabilities and financial resources. At this Pre-qualification process the Appellant has submitted tangible proofs of its financial status including the line of credit facility of £275,000,000.00. Thus, the Appellant's shortcomings, if any existed on the commitment letter ought to have been treated as a minor deviation.

The learned counsel submitted that, had the Respondent considered the Appellant's application for administrative review appropriately, it would have reinstated it into the Pre-qualification

A handwritten signature in dark ink, appearing to be 'J. S. N.' followed by a long horizontal stroke.

process. The Appellant's application for administrative review was attached with a commitment letter from its bank dated 24th November 2022 which complied with the requirement of Item 14(i). Therefore, the Respondent's decision on the Appellant's application for administrative review is bad in law, invalid and misconceived as it ought to have considered the re-submitted commitment letter. That is to say, the Respondent's decision has gone against the general principles and standards of procurement as provided under Section 4A of the Public Procurement Act No. 7 of 2011, as amended (herein after referred to as "**the Act**") by failing to provide equal opportunity to the Appellant in proving its financial capability.

Finally, the Appellant prayed for the following orders:-

- i. Suspension of the procurement process pending determination of the Appeal;
- ii. A Declaration that the bank guarantee submitted by the Appellant adhered to bid instructions as detailed in the Pre-qualification Documents and that the disqualification of the Appellant by the Respondent was illegal and invalid;
- iii. A declaration that the Appellant qualifies to be shortlisted and therefore the Respondent be ordered to shortlist it;
- iv. The Appeals Authority to suspend the request for proposals in respect of the Tender or any other relevant tender/procurement process pending the determination of this Appeal;



- v. The Appeals Authority to quash the administrative review decision of the Respondent dated 8th December 2022, which rejected and dismissed the Appellant's application for review;
- vi. The Appeals Authority to review the administrative review process of the tender conducted by the Respondent and test its legitimacy pursuant to section 97 (5) of the Act;
- vii. The Appeals Authority to revise the decision of the Respondent;
- viii. The Appeals Authority to order payment of reasonable compensation to the Appellant;
- ix. Any other reliefs and orders that the Appeals Authority deems just and fit to grant; and
- x. Order the Respondent to pay costs of this Appeal.

REPLY BY THE RESPONDENT

The Respondent's submissions were led by Mr. Edwin Webiro State Attorney from the Office of Solicitor General (OSG) assisted by Mr. Deodath Mushi Senior State Attorney from the Respondent. On the first issue the learned State Attorney started his submission by indicating that Section 72(1) of the Act requires the criteria for tender evaluation to be clearly specified in the Tender Document. Further, Regulation 203(1) of the Public Procurement Regulations as amended (hereinafter referred to as "**the Regulations**") requires tender evaluation to be consistent with the terms and conditions provided in the tender document. The position of the two provisions was emphasized by this Appeals Authority on its



decision issued with respect to Appeal Case No. 37 of 2021/22 between *M/S Sahel Trading Co. Limited versus Tanzania Posts Corporation.*

The learned State Attorney submitted that the Appellant was disqualified for failure to comply with the requirements of Item 14(i). The Pre-qualification Document required applicants to submit commitment letters from their banks that indicate that they would be guaranteed during tendering and execution process. According to the Respondent the requirement was very specific and clear and not too general as contended by the Appellant.

The learned State Attorney submitted further that, in compliance with the requirement of Item 14(i), the Appellant attached to its application a commitment letter dated 27th June 2022 from Global Loan Agency Services Limited (glas). The commitment letter had a number of anomalies; firstly, the words used did not indicate if the bank is committed to guarantee the Appellant during tendering and execution process as was required under Item 14(i). The wording of the said letter indicated that the bank was ready to extend a credit facility of £275,000,000.00. Furthermore, the letter was too general as it indicated that it had been issued for general corporate purposes. The Pre-qualification in dispute is in relation to printing of banknotes, hence the commitment letter should have been specific for that purpose, the Respondent contended.



Secondly, the letter extended a credit facility of £275,000,000.00 to De La Rue Group of Companies and not to the Appellant, De La Rue International Limited. The learned State Attorney stated that De La Rue Group of Companies and De La Rue International Limited are two distinct entities in the eyes of the law. Each has its own legal personality. The Respondent submitted further that the Appellant's commitment letter is not specific as to the amount of credit facility that would be available to the Appellant. The Appellant has also not attached a consent agreement which would indicate that De La Rue Group of Companies has accepted the use of the extended credit facility during execution of the contract.

Thirdly, the Appellant's commitment letter indicated a credit facility of £275,000,000.00 while the magnitude of the Tender is not certain as the same was to be determined during tendering. The Appellant's bank was required to issue a commitment letter that it would guarantee the Appellant during tendering and contract execution. The amount of credit facility could be issued later after being certain of the actual contract value.

Fourthly, the Appellant's commitment letter indicated that the credit facility would mature on 1st December 2023. That means the credit facility would not be available until 1st December 2023. That implies that, if the execution of the contract would have to take place before the credit maturity date, the Appellant's financial capability would be impaired.

A handwritten signature in dark ink, appearing to be 'V. S. V.', is written over the page number.

The learned State Attorney stated that, the four elaborated shortfalls in the Appellant's commitment letter indicated that the Appellant failed to comply with the requirement of Item 14(i).

The learned State Attorney expounded further that since parties are always bound by their own pleadings, item vi(c) of the grounds of Appeal indicated that the Appellant realised the shortfalls of its commitment letter after receipt of the Pre-qualification results. Therefore, it requested its bank to amend the contents of the former commitment letter by issuing a new one. The amended commitment letter dated 24th November 2024 was attached to the Appellant's application for administrative review. However, the same could not be considered by the Respondent as it was submitted after the deadline for submission of applications and after the Respondent has made a decision to disqualify the Appellant. Thus, the Appellant's act of resubmitting a commitment letter indicated that it was aware that it failed to comply with Item 14(i).

With regard to Clause 24.1 of the ITA, the learned State Attorney submitted that, the provision gives discretion to the Respondent to waive minor deviations. Item 14(i) which disqualified the Appellant could not have been waived as it is among the material conditions for the Pre-qualification. According to the Respondent, the requirement aimed at assessing the financial position of the applicants. Therefore, the failure to comply with such a

A handwritten signature in dark ink, appearing to be a stylized 'C' followed by a flourish and a checkmark-like stroke.

requirement was a material deviation and could not have been waived.

The learned State Attorney cited Regulation 204(2) of the Regulations. He stated that the provision provides guidance on what amounts to material deviation. As per his interpretation, the commitment letter is among the mandatory documents that would render a tender to be rejected for material deviation if the same would not be complied with. The learned State Attorney added that if the tender has been found to be non-responsive the same has to be rejected pursuant to Regulation 206 (2) of the Regulations.

The learned State Attorney submitted further that it could not have sought for the clarification from the Appellant as Regulation 207(1) of the Regulations prohibits clarification to be sought if the same is aimed at making a non-responsive tender responsive. If clarification had been sought from the Appellant and it was allowed to amend its commitment letter the same would amount to making a non-responsive application responsive.

The Appellant was required to comply with the requirement of the Pre-qualification Document despite being experienced in the industry of printing banknotes. Thus, the Appellant's non-compliance with Item 14(i) rendered its application non-responsive and therefore its disqualification was fair and in accordance with the law.

A handwritten signature in dark ink, appearing to be 'D. S. N.' followed by a long horizontal stroke.

Regarding the Appellant's application for administrative review, the learned State Attorney submitted that, the same was determined fairly as the re-submitted Appellant's commitment letter could not have been considered at that stage. Therefore, the application for administrative review was dismissed for being devoid of merits. Finally, the Respondent prayed for dismissal of the Appeal with costs.

On its brief rejoinder the Appellant submitted that the Respondent has misconceived the words "general corporate purpose" contained in its commitment letter dated 27th June 2022. According to the Appellant the said words aimed to cover its core business which is printing of banknotes. Had the Respondent wanted to ascertain the Appellant's financial status it could have visited its website or its information provided at the London Stock Exchange.

In relation to maturity date specified in the commitment letter dated 27th June 2022, the Appellant submitted that the maturity date is the end date and not the date of availability of the credit facility. The credit facility was available as of the date of the commitment letter.

The Appellant challenged the Respondent's argument relating to shortfalls in its commitment letter and stated that the argument relating to De La Rue Group of Companies and magnitude of the credit facility are new to this Appeal and the same should not be considered. Furthermore, Regulations 204(2), 206(2) and 207 of the Regulations cited by the Respondent relates to a tender process while the instant



dispute is in relation to Pre-qualification process which is governed by other provisions. Therefore, the provisions are inapplicable.

ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the disqualification of the Appellant's application at the Pre-qualification process was justified

In ascertaining the validity of the Appellant's disqualification, the Appeals Authority reviewed the letter dated 21st November 2022 that communicated the pre-qualification results which is part of the record of Appeal and observed that the Appellant was disqualified for failure to comply with Item 14(i). Item 14(i) reads as follows:-

"Item 14 Financial Capabilities:-

- i. Commitment letter from the Applicant's bank to guarantee during tendering and execution process in respect of tender for re-Printing Banknotes that, the bank will support the particular supplier by issuing line of Credit Facility at the magnitude to be determined during tendering process."*

(Emphasis supplied)

The Appeals Authority's understanding of the above quoted provision is that it required applicants to submit commitment letters from their respective banks which would contain three main components, namely:-



- i) That the bank would guarantee the tendering process;
- ii) That the bank would guarantee the execution process; and
- iii) That the bank would support the particular supplier by issuing a line of credit facility at the magnitude to be determined during tendering process.

The Appeals Authority reviewed the Appellant's application as submitted on TANEPS and observed that in complying with Item 14(i) it attached a letter titled Credit Facility dated 27th June 2022 from Global Loan Agency Services Limited (glas). The said letter was addressed to the Respondent indicating that upon request by the Appellant a revolving credit facility of £275,000,000.00 was made available by glas to De La Rue Group of Companies. The letter indicated further that £121,492,416.39 was available for utilisation as of the date of the letter. Furthermore, the maturity date (end date) of the credit facility is 1st December 2023.

Having reviewed the Appellant's commitment letter the Appeals Authority observed that the letter merely stated that a credit facility £275,000,000.00 is available to De La Rue Group of Companies and not the Appellant (De La Rue International Limited). Therefore, the Appeals Authority is of the view that the commitment letter did not comply with the three components required under item 14(i).

The Appeals Authority observed further that the Appellant was required to comply with the criteria provided in the Pre-qualification document despite being a leading firm or presenting other documents in compliance with other criteria. Regulation 122(3) of the Regulations requires evaluation of the submitted applications to be based on the criteria provided for in the Pre-qualification Document. Regulation 122(3) of the Regulations reads as follows:-

Reg.122(3)"*Upon receiving the applications for pre-qualification, the appointed evaluation team shall evaluate such applications using criteria for qualification prescribed in the invitation to pre-qualify and shall, in addition, prepare an evaluation report consisting list of firms recommended for consideration to pre-qualify*"

From the above quoted provision, the Appellant could not be pre-qualified based on factors other than those provided for in the pre-qualification Document.

The Appeals Authority considered the Respondent's proposition that the line of credit facility has been extended to De La Rue Group of Companies and not the Appellant. The Appeals Authority finds such an argument to have merit as it is clear that the credit facility has been issued to De La Rue Group of Companies. The



Appeals Authority is in agreement with the Respondent that De La Rue Group of Companies and the Appellant are two distinct legal entities in the eyes of the law.

The Appeals Authority reviewed further the record of Appeal and observed that the summary of the evaluation report (PDF format) submitted by the Respondent when submitting its reply to this Appeal showed that the Appellant was disqualified for failure to comply with Item 14(i). However, the detailed system evaluation report (excel) found on TANePS on the same Pre-qualification process indicated that the Appellant was disqualified for failure to comply with Item 16(i). The detailed system evaluation report indicated that the Appellant complied with Item 14(i) and failed to comply with Item 16(i). Item 16(i) reads as follows:-

"Item 16 Current Commitment:-

The Applicant shall also demonstrate, to the satisfaction of the Purchaser that, they have adequate sources of finance to meet the cash flow requirements on contracts currently in progress and for future contractual commitments, thus applicant shall submit the following information:-

- i. Number of current commitments and how they have been financed;*
- ii. How future commitments will be financed."*



Having reviewed Item 14(i) and 16(i) the Appeals Authority observed that each provides a different criterion. The Appeals Authority deemed it proper to establish the actual reason for disqualification of the Appellant. In so doing during the hearing Members of the Appeals Authority asked the Respondent to clarify the inconsistencies noted on the summarized evaluation report and the detailed system evaluation report. In response thereof, the Respondent conceded to the inconsistencies and quickly pointed out that it was a human error.

Given the Respondent's concession on the inconsistencies noted on the evaluation report, the Appeals Authority deemed it appropriate to also verify if the proposed pre-qualified firms complied with the requirement of the Pre-qualification Document. According to the summarized evaluation report the proposed pre-qualified applicants were: M/S Orell Fussli AG, M/S Polska Wytownia Papierow Wartosciowych Spolka Akcyjna, M/S Oberthur Fiduciaire SAS and M/s Giesecke+ Devrient Currency Technology GmbH. According to the Respondent the pre-qualified applicants complied with requirements of the Pre-qualification Document (Item 14(i) and 16(i)).

The Appeals Authority started by assessing if the proposed pre-qualified applicants complied with Item 14(i). In so doing the Appeals Authority reviewed the application submitted by M/S Orell Fussli AG submitted on TANEPS and observed that at the slot where it was required to attach a commitment letter from its bank, it attached a recommendation letter dated 4th July 2022 from UBS Switzerland AG. The said letter was general

A handwritten signature in dark ink, appearing to be 'J. E. J.', is located at the bottom center of the page.

and did not indicate if the Issuing authority committed itself to guarantee the firm during tendering and execution thereof. The said letter also did not indicate if the issuing authority committed itself to support that particular firm by issuing a line of credit facility at the magnitude to be determined during tendering process. Thus, from the noted anomalies, the Appeals Authority finds M/S Orell Fussli AG to have not complied with Item 14(i).

M/S Giesecke+ Devrient Currency Technology GmbH in complying with Item 14(i), attached the letter titled Commitment for Bank's Undertaking for Line of Credit addressed to the Respondent dated 22nd June 2022. The said letter was issued by UniCredit Bank AG. The letter indicated that Unicredit Bank knows M/S Giesecke+ Devrient Currency Technology GmbH that it has a capacity to meet its obligations for the execution of the contract. The wording of the letter did not indicate that the bank has committed itself to guarantee the firm during tendering and execution. The bank also did not commit itself that it will provide support to that particular applicant by issuing a line of credit facility at the magnitude to be determined during tendering. From the contents of the letter, the Appeal Authority finds that M/S Giesecke+ Devrient Currency Technology GmbH also failed to comply with Item 14(i).

M/S Polska Wytwarznia Papierow Wartosciowych Spolka Akcyjna in compliance with Item 14(i) submitted a letter dated 27th June 2022 from Bank Pekao. The said letter indicated that it is ready to work with M/S Polska and willing to support it with a bank guarantee during tendering. The wording of the letter does not state explicitly that the bank



committed itself to guarantee the applicant during tendering and execution of the contract. Furthermore, the letter does not state if the bank would provide support to that particular applicant by issuing a line of credit facility at the magnitude to be determined during tendering. Thus, M/S Polska Wytwarznia Papierow Wartosciowych Spolka Akcyjna too failed to comply with requirement of Item 14(i).

M/S Oberthur Fiduciaire SAS in compliance with Item 14(i) submitted a letter dated 20th June 2022 addressed to the Respondent from Societe Generale. The said letter indicated that the issuing authority was ready to guarantee M/S Oberthur Fiduciaire SAS by being ready to issue a line of credit facility at the magnitude to be determined during tendering process. The letter does not indicate that the issuing authority commits itself to guarantee the applicant during tendering and execution of the contract. Therefore, M/S Oberthur Fiduciaire SAS equally failed to comply with Item 14(i).

Having reviewed the applications of four firms and observed that none of them complied with the requirement of Item 14(i), the Appeals Authority further reviewed the applications submitted by the Appellant and four pre-qualified applicants to ascertain if they all complied with Item 16(i). The Appeals Authority reviewed the Pre-qualification Document and observed that in complying with Item 16(i), applicants were required to fill in Form FIN-3.3. The Form required applicants to state the name of the contract, purchaser contact information, value of outstanding contracts,

A handwritten signature in black ink, appearing to be a stylized 'S' followed by a checkmark-like flourish.

estimated delivery date, average monthly invoices over the last six months and source of finance.

In complying with Item 16(i) the Appellant attached Form FIN 3.3 with a proviso that due to the nature of the goods supplied and its confidentiality restrictions, it was unable to release specific details of its clients' contracts without express permission from them. The Appellant listed contracts for supply of banknotes in the years 2018/19, 2019/20 and 2020/21 with their volume from various geographical regions where it has its operations. The Appellant did not disclose any of the information required in Form FIN 3.3.

The Appeals Authority further reviewed the applications submitted by the pre-qualified applicants and noted as follows:-

- a) M/S Orell Fussli AG indicated through Form FIN-3.3 the name of the contract and purchasers contact information only. Other information was not disclosed due to existing confidentiality agreement.
- b) M/S Giesecke Devrient Currency Technology GmbH just mentioned the names of the clients it worked with within ten years. Other information was also not disclosed due to existence of confidentiality agreement.
- c) M/S Oberthur Fiduciaire SAS in complying with Form FIN-3.3 mentioned customers contact information only.

Other information was not disclosed as it claimed to be confidential too.

- d) M/S Polska Wytwarznia Papierow Wartosciowych Spolka Akcyjna disclosed all the information as required in Form FIN – 3.3. Thus, it was the only the firm that complied with Item 16(i).

From the above observations, it is crystal clear that the Appellant and the three shortlisted applicants failed to comply with Item 16(i). Furthermore, all four shortlisted applicants and the Appellant failed to comply with Item 14(i).


In view of the above findings the Appeals Authority concludes the first issue in the affirmative despite other findings herein above that all pre-qualified tenderers ought to have been equally disqualified.

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

Taking cognizance of the findings hereinabove the Appeals Authority hereby allow the Appeal and nullifies the whole Pre-qualification process. The Respondent is ordered to re-start the Pre-qualification process in observance of the law.

Each party is to bear its own costs. It is so ordered.

This Decision is binding and can be enforced in accordance with Section 97(8) of the Act.



The Right of Judicial Review as per Section 101 of the Act is explained to the parties.

This Decision is delivered in the presence of the parties this 20th day of January 2023.

HON. JUSTICE (RTD) SAUDA MJASIRI


.....
CHAIRPERSON

MEMBERS: -

1. ADV. ROSAN MBWAMBO.....


2. ENG. STEPHEN MAKIGO.....