

IN THE  
PUBLIC PROCUREMENT APPEALS AUTHORITY  
APPEAL CASE NO. 11 OF 2016-17  
BETWEEN  
M/s SGS TANZANIA SUPERITENDENCE COMPANY  
LIMITED.....APPELLANT  
AND  
ENERGY AND WATER UTILITIES REGULATORY  
AUTHORITY.....RESPONDENT

DECISION

CORAM

- |                              |                   |
|------------------------------|-------------------|
| 1. Mrs. Rosemary A. Lulabuka | - Ag. Chairperson |
| 2. Mr. Louis Accaro          | - Member          |
| 3. Eng. Aloys Mwamanga       | - Member          |
| 4. Mr. Ole-Mbille Kissioki   | -Secretary        |

SECRETARIAT

- |                           |                        |
|---------------------------|------------------------|
| 1. Ms. Florida R. Mapunda | - Senior Legal Officer |
| 2. Ms. Violet S. Limilabo | - Legal Officer        |
| 3. Mr. Hamisi O. Tika     | - Legal Officer        |

FOR THE APPELLANT

- |                      |                                     |
|----------------------|-------------------------------------|
| 1. Mr. Octavian Temu | -Advocate, Octavian & Co, Advocates |
| 2. Mr. Jovin Lyimo   | -Advocate, Octavian & Co, Advocates |
| 3. Mr. Kiki Gyan     | -Managing Director, SGS Tanzania    |

4. Mr. Konan Dorgeless -Manager, Oil and Gas Services

FOR THE RESPONDENT

1. Mr. Deogratus Kumalija -Head, Procurement Management Unit

2. Mr. Edwin Kidiffa -Ag. Director of Legal Services

This decision was scheduled for delivery today 20<sup>th</sup> January 2017, and we proceed to do so.

The Appeal at hand was lodged by M/s SGS TANZANIA SUPERITENDENCE LIMITED (hereinafter referred to as "the Appellant") against the Energy and Water Utilities Regulatory Authority, commonly known by its acronym EWURA (hereinafter referred to as "the Respondent").

The Appeal is in respect of Tender NO. AE/024/2016-17/HQ/N/21 for Provision of Fuel Marking Services (hereinafter referred to as "the tender").

According to the documents submitted to the Public Procurement Appeals Authority (hereinafter referred to as "the Appeals Authority"), the facts of the Appeal may be summarized as follows:

The Respondent vide the Daily Newspaper dated 26<sup>th</sup> September, 2016, invited tenderers to submit tenders under the International Competitive Tendering procedures( ICB) specified in the Public Procurement Act No. 7 of 2011, as amended (hereinafter referred to as "the Act") and the Public

Procurement Regulations GN. No. 446 of 2013 (hereinafter referred to as GN. No. 446/2013).

The deadline for the submission of tenders was set for 25<sup>th</sup> October 2016. Nine firms purchased the tender document and only three tenders were received on or before the deadline from the following firms:-

S/N	NAME OF THE BIDDER
1.	M/s Aunthentix, Inc
2.	M/s SGS Tanzania Superintendence Company Limited
3.	M/s SICPA SA, in association with Global Fluids International (T) Limited.

The above tenders were then subjected to evaluation which was conducted in three stages namely; preliminary, detailed and Post qualification evaluation.

During the preliminary evaluation for commercial responsiveness, the tenders by M/s Aunthentix, Inc and M/s SGS Tanzania Superintendence Company Limited were disqualified for failure to meet eligibility requirements. Specifically, the Appellant's tender was disqualified for failure to submit a registered Power of Attorney authorizing the signatory of the tender to commit the tenderer as provided for under Clause 17 of the Bid Data Sheet (hereinafter referred to as "the BDS"). The only remaining tender by M/s SICPA SA, in association with Global Fluids International (T) Limited qualified for the detailed and Post qualification evaluation. The Evaluation Committee found his tender to be substantially

responsive to the Tender Document and was therefore proposed for the award of the contract at a contract price for a unit rate of Six United States Dollar one hundred ninety five cents per cubic meter (USD. 6.195/M<sup>3</sup>) VAT inclusive for the period of three years. The Evaluation Committee further recommended negotiations with the proposed successful tenderer on the price pursuant to Section 76(2) of the Act.

The Tender Board at its meeting held on 6<sup>th</sup> December, 2016, approved negotiations with the proposed successful tenderer.

On 15<sup>th</sup> December, 2016, the negotiation meeting between the Respondent and the proposed bidder was conducted, in which he accepted to reduce his earlier price of USD 5.25 to 5.15 VAT exclusive for marking of 1,000 liters.

The Tender Board at its meeting held on 20<sup>th</sup> December, 2016, approved the recommendations of the Evaluation Committee and awarded the contract to M/s SICPA SA, in association with Global Fluids International (T) Limited at a negotiated contract price of USD 5.15 VAT exclusive for marking 1,000 liters.

That, on 21<sup>st</sup> December, 2016, the Respondent issued a Notice of Intention to award the contract to all bidders who participated in the tender.

That, aggrieved by the Respondent's intention to award the tender to the proposed bidder, the Appellant on 23<sup>rd</sup> December, 2016, sought for

administrative review to the Respondent's Accounting Officer on two major grounds namely;

- i. That, during the tender opening ceremony the Respondent confirmed that the Appellant's tender was properly attached with a notarized Power of Attorney and there was no objection raised regarding registration of the same.
- ii. That, the Appellant had quoted lower price compared to the proposed successful tenderer. Thus, the Respondent would have awarded tender to them instead of the proposed tenderer.

On 23<sup>rd</sup> December 2016, the Respondent's Accounting Officer delivered his decision by dismissing the complaint for lack of merits.

Dissatisfied further by the Respondent's decision, on 29<sup>th</sup> December 2016, the Appellant filed this Appeal to the Appeals Authority.

## SUBMISSIONS BY THE APPELLANT

The Appellant raised four grounds of appeal, which may be summarized as follows;

- i. That, failure to submit a registered Power of Attorney could not render their tender to be declared ineligible as per Section 3 of the Instruction to Tenderers and Regulations 9 and 204 (2) (a) of GN No. 446 of 2013, such a document was not mentioned. Furthermore, although the requirement was a matter of fact, registration of Power of Attorney of this kind is optional, failure of which does not render it invalid. Moreover, registration can be carried out at any time when required. The Respondent would have required the Appellant to

register later on and that no harm would have been occasioned to them.

- ii. That, the requirements for tender opening set out in Clause 24.3 of the Instruction to Tenderers (ITB) which was modified by Clause 21 of the BDS provided for details to be announced during the tender opening ceremony amongst them being a Registered Power of Attorney. If indeed the registration of the Power of Attorney was so important to warrant a rejection of tender, then it ought to have been read out and checked at that stage to ensure that all tenderers have complied with such a requirement. To the contrary, only presence of a Power of Attorney was read out without specifying whether it was registered or not. The Respondent's failure to read the requirement connotes the waiver. The Respondent could therefore not insist on the requirement. Additionally, the Appellant is not sure whether the proposed successful tenderer has complied with such a requirement.
- iii. That, the submission of a notarized Power of Attorney but not registered ought to have been treated as a minor deviation in terms of Clause 27.4 of the ITT and Regulation 207(2) (b) of the GN. No. 446 of 2013, which would have justified the Appellant's tender to proceed to technical evaluation and price comparison in accordance with Clauses 28 to 32 of the ITB. The Respondent's failure to use Clause 27.4 of the ITB will cause them to lose USD 17,640,000. Furthermore, their tender price was VAT exclusive of USD 2.70 per 1,000 Liters of fuel as opposed to the proposed successful tenderer

who quoted USD 5.25 exclusive of VAT. The difference of price between the two stands at 19% which is translated in USD 17,640,000, a difference to be paid by the public for three years. Thus, violating the principle of value for money.

- iv. That, the association of M/s SICPA with Global Fluid International arose after the tender opening ceremony. This is verified by the proposed successful tenderer's tender security document which was read in the name of SICPA alone during tender opening contrary to the requirement of Clause 17.10 of the ITB which require the said document to be in the association's name. If the association existed before, it ought to have been read from the beginning.

Finally the Appellant prayed for the following reliefs:-

- a. Order for suspension of award process;
- b. Order nullifying the intention to award;
- c. Order for new evaluation committee to re-evaluate the tenders; and
- d. Order the Respondent to compensate the Appellant a sum of USD 3,000 equivalent to the cost of tender preparation and appeal process.

#### SUBMISSIONS BY THE RESPONDENT

The Respondent's written as well as oral replies to the grounds of appeal may be summarized as follows:-

That, the basis for the evaluation of tenders in terms of Regulation 203 (1) of GN. No. 446/2013 is the content of the tender document itself. The

Appellant was disqualified based on what was provided for in the Tender Document; through Clause 17 of the BDS which clearly and precisely provided that bidders should submit "a Registered Power of Attorney". The Appellant did not comply with the requirement. He was therefore disqualified based on the law.

That, the Respondent was duty bound to establish eligibility of all tenderers as per Regulation 9 (5) of GN No. 446/2013. The Appellant's failure to submit a registered Power of Attorney in terms of Regulation 204 (2) (b) and (k) amounts to a material deviation that led to rejection of his tender.

That, since the Tender Document clearly required the registered Power of Attorney, the Appellant cannot claim that its registration was optional. He was required to comply. The Appellant's failure to register his power of Attorney was a fault and the Registrar of Titles vide his letter dated 22<sup>nd</sup> November, 2016 verified that the Appellant's Power of Attorney was not duly registered. The assertion that he was eligible is therefore baseless.

That, the powers to authenticate the validity of any document submitted by tenderers is not vested unto the tender opening committee; such powers are vested unto the Evaluation Committee when evaluating tenders. The argument by the Appellant that the opening committee ought to have announced whether the Power of Attorney is registered or not, is weak.

With regard to assertion that other tenderers did not submit registered Power of Attorneys, specifically, the proposed successful tenderer, the Respondent submits that such a complaint was not raised to the

Respondent's Accounting Officer. However, the Respondent's replies in above serves the purpose.

That, with regard to the assertion that the Respondent would have saved a lot of money if the Appellant's tender was preferred; the Respondent submits that the Appellant's assertions are based on his opinion and not operation of the law. The Respondent does not buy his opinion since he was not responsive. So he cannot claim on the matter.

That, the Appellant did not raise complaint relating to the names of the proposed tenderer to the Respondent's Accounting Officer, hence such complaints could not be raised at the appellate level. However, the tender by the proposed tenderer contained all names of the association before the opening of the tenders and that M/s SICPA SA is the Lead member of the association. Therefore, reading his name alone did not in any way exclude the associate.

Finally the Respondent prayed for the following reliefs:-

- a) Order to dismiss the Appeal for lack of merits;
- b) A declaration order that, the Appellant's disqualification was justified;  
and
- c) Any other Order the Appeals Authority deem just to grant.

In his brief rejoinder, the Appellant submitted that no bidder had raised concerns regarding registration of the Power of Attorney during the Tender Opening Ceremony as contended by the Respondent. Furthermore, having received the Respondent's minutes of the Tender opening ceremony availed through his replies to the grounds of Appeal, he observed a number

of anomalies which call for determination by the Appeals Authority. These are;

- i. The summary forms for the submitted tenders do not correspond with the checklist items submitted by the bidders.
- ii. The Respondent did not indicate the number of days in the bid validity column contained in the checklist which the bidders' bids were to expire.

Based on those discrepancies, the Appellant has observed that the proposed successful bidder's bid validity period contains less number of days than those contained in the tender document. To wit, 120 days. He therefore reiterated his position that his disqualification was not proper.

#### ANALYSIS BY THE APPEALS AUTHORITY

In resolving the contentious issues by the parties, the Appeals Authority has observed that there are two new grounds of Appeal which have been raised by the Appellant but were not submitted to the Respondent's Accounting Officer for administrative review. These are;

1. That, the association of the proposed bidder M/s SICPA with Global Fluid International (The proposed successful tenderer) emerged after the opening ceremony of the tenders; and
2. That the bid validity period of the proposed successful bidder's bid was less than those provided for in the Tender Document. That is, 120 days.

The Appeals Authority deemed therefore necessary before embarking on analysis of the Appeal based on the grounds that were deliberated by the

Accounting officer, to ascertain the admissibility of the new grounds at this appellate level.

With regard to the first new ground of Appeal, the Appeals Authority invoking Section 88(4) of the Act as amended, together with Rule 13(5) of the Public Procurement Appeals Rules, GN.NO.411 of 2014, rejects this ground. It so because the same was not contained in the Appellant's grounds for administrative review deliberated by the Respondent's accounting officer. The Appeals Authority is of the settled view that at the appellate level, the matter that are to be deliberated upon are those emanated from the administrative decision of the Accounting officer or matters that come afresh after the contract had entered into force in which the accounting officer is ousted with jurisdiction pursuant to Section 88(4) supra, and not otherwise. It would therefore be violation of the law to entertain it at this juncture. In view of the above, the Appeals Authority would not delve with the issue.

With regard to second ground, the Appeals Authority's stand differs with that of the first ground. It so because the matter arose out of the Respondent's replies to the grounds of Appeal and the attachments annexed therein. That is, Minutes of the tender opening ceremony. By virtue of the same Rule 13(5) of GN.NO.411 of 2014, the law allows the Appellant to raise a new ground that emanates from the Respondent's replies. That said, the Appeals Authority will deal with it in the due course of this Appeal.

The above notwithstanding, in dealing with this Appeal, the Appeals Authority having gone through the tender proceedings including various

documents submitted by both parties as well as oral submissions during the hearing, is of the view that the Appeal has been centred on four main issues calling for determination; and these are:-

1. Whether the Appellant's disqualification based on unregistered Power of Attorney was justified.
2. Whether the Appellant's bid price was lower than the proposed successful bidder.
3. Whether the bid validity period of the proposed bidder is shorter than that provided in the Tender Document.
4. What reliefs, if any, are the parties entitled to

Having framed the above issues, the Appeals Authority proceeded to resolve them as follows;

1. Whether the Appellant's disqualification based on unregistered Power of Attorney was justified

In resolving this issue, the Appeals Authority took cognisance of the Appellant's admission in his statement of Appeal and during the hearing that they did not submit a registered Power of Attorney. However, such a registration omission would have been considered as a minor deviation on the following basis;

- The Evaluation Committee would have invoked Regulation 207 (2) (b) read together with Regulation 202 (5) of GN.NO.446/ 2013, to rectify the anomaly and consider their tender responsive;
- That, their Power of Attorney was duly notarized by the authorized person under the law. To wit; the Commissioner for Oaths.

- That, nowhere in the eligibility provisions under Clauses 3 and 12 of the ITB; as well as Regulations 9 and 204(2) (b) of GN.NO.446 of 2013, that mention that Power of Attorney shall be used to determine eligibility of the firms submitting tenders.
- That, the registration of the said is optional under the Registration of Documents Act, Cap 334 (sic) of R.E 2002, save for the land related documents.
- That, if the requirement for the registered Power of Attorney was so important, the Respondent would have checked it and confirm its compliance during the tender opening ceremony pursuant to Clause 24.3 of the ITB as modified by Clause 21 of the BDS. To the contrary, the Respondent did not do that. The minutes for the tender opening ceremony availed by the Respondent as well as the requirement checklist attached to it; indicate that all bidders have complied with the requirement.

To substantiate the Appellant's arguments above, the Appeals Authority revisited Clause 3 of the ITB referred by the Appellant and observed that it provides for the general qualifications of the would be bidders in the bidding process, so does Regulation 9 of GN.NO.446 of 2013. None of the provisions explicitly provide for the requirement of the Power of Attorney as correctly submitted by the Appellant. However, Clause 3.9 of the Tender Document provides in a nutshell that the bidder shall provide to the procuring entity evidence of their eligibility in terms of legal, technical and financial requirements. The Appeals Authority, upon further perusal of the Tender Document observed under Clause 11.1 (g) of the ITT that among the documents that constituted the tender was the Power of Attorney. The

Clause provides further that such a Power of Attorney must conform to Clause 19 of the Instruction To Tenderers. The Clause reads;

Clause 11.1 The Tender prepared by the Tenderer shall constitute the following components:

a) N/A

g) Written Power of Attorney authorizing the signatory to commit the Tenderer in accordance with Clause 19.

The Appeals Authority observed further that, apart from Clause 3 of the ITB as well as the Regulation 9 supra, being silent on the issue, such a requirement was contained under Clause 11.1(g) cited above. The Appeals Authority revisited clause 19 as cross referred by Clause 11.1(g) and observed at its Clause 19(2) that the authorization provided for under Clause 11.1 (g) was to conform with the modality provided for in the BDS. The Clause reads;

Clause 19 (2)....This authorization shall consist of a written confirmation as specified in the Tender Data Sheet and shall be attached to the Tender.

(Emphasis Added).

The Appeals Authority revisited the referred Tender Data Sheet and observed that Clause 19(2) of the ITT was modified by Clause 17 of the BDS. The Clause clearly and precisely provides that the form of authorization which the bidders were to submit was the Registered Power of Attorney, as correctly submitted by the Respondent. Thus, the Appellant's argument that Power of Attorney is nowhere mentioned in the eligibility requirement is watered-down by the above cited clauses. The

Appeals Authority's view is that such a requirement was indeed amongst the documents that constituted the tender. The Appeals Authority observes further that under the Registration of Documents Act, Cap 117 R.E. 2002, powers to register various documents including the Power of Attorneys are vested into the Registrar of titles and not the commissioner for oaths as contended by the Appellant, as correctly submitted by the Respondent.

The pertinent question which the Appeals Authority asked is whether such a requirement was a major deviation to warrant rejection of the Appellant's bid as opposed by the Appellant.

In response to this key issue, the Appeals Authority revisited the Evaluation Report and observed that the Appellant's bid was disqualified at the preliminary evaluation stage for lack of a Registered Power of Attorney. To verify the Appellant's basis for disqualification at this stage and its authenticity, the Appeals Authority revisited Clause 27 of the ITB which provides for the criteria to be assessed during the preliminary evaluation as well as the conditions under which the tenders could be rejected. In doing so, the Appeals Authority observed that Clause 27(1) of the ITB requires the Respondent before conducting detailed evaluation to verify amongst other issues, the eligibility requirements of the bidders as well as their responsiveness to the requirements of the Tender Document. The Appeals Authority observed further that Clause 27.3 of the ITB provides clearly that if any of the documents required from the tenderer under Clauses 11 and 12 is missing or is not provided in accordance with the ITT, the said tender is to be rejected. The provisions read;

27.1 Prior to the detailed evaluation of Tenders, the Procuring Entity will determine whether each Tender:

- a) Meets the eligibility criteria defined in ITT Clause 3;
- b) N/A
- d) is substantially responsive to the requirements of the Tendering Documents.

The Procuring Entity's determination of a Tender's responsiveness will be based on the contents of the Tender document itself.

27(3) The Procuring Entity will confirm that the documents and information specified under ITT Clause 11 and ITT Clause 12 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.

(Emphasis Supplied).

From the above provisions, it is the Appeals Authority's views that there is an indication of non compliance with the requirements of the Tender Document regarding the registration of the Power of Attorney on the part of the Appellant as clearly provided for under Clause 27(3) of the ITT which would have sufficed the rejection of their tender at this stage. However, before making such a conclusion, the Appeals Authority revisited Regulation 207(2) (b) read together with Regulation 202 (5) of GN.NO.446/ 2013, relied upon by the Appellant to require the Evaluation Committee to rectify the anomaly and make their tender responsive and

observed that the said Regulation 207(2) (b) has been embedded in discretionary way to the procuring entity and not in the Appellant's wishes. Thus, the Procuring entity may regard the tender as responsive if it contains minor deviation that does not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the Tender Document. In this Appeal, the Respondent did not invoke such discretionary powers. Under the circumstances, the Appeals Authority is of the view that the Appellant's unregistered Power of Attorney not only departs from the characteristics of registration as provided for under Clauses 11 and 19(2) of the ITT as modified by Clause 17 of the BDS but also contravenes Clause 27(1) (d) of the Tender Document. And since such was not made a minor issue by the Respondent, the Appellant cannot claim as a matter of right.

Furthermore, the Appeals Authority revisited Regulation 202(5) of GN.NO.446 of 2013 relied upon by the Appellant and observed that it does not support his argument since his Power of Attorney was not in conformity with the condition provided for in the Tender Document. The Proviso reads;

Reg. 202(5) For purpose of this regulation, a tender is considered to be substantially responsive if it conforms to all the terms, conditions and specifications of the tender document without material deviation or reservation

It is the Appeals Authority's considered view that in terms of Clause 27(2) (b) of the Tender Document read together with Regulation 204(2) (b) and (k) cited by the Respondent, such omission could not be treated as a minor deviation since it goes contrary to the requirements of the Tender

Document. Therefore, the Appeals Authority does not shore up the submission by the counsels for the Appellant that registration of the Power of Attorney of this kind was optional and could not render it invalid; and that its registration would have been made at any time when required without occasioning any harm to the Respondent. It is so because the tender document provided crystal clearly for the requirement and that the Appellant was duty bound to comply prior to the submission of the tenders as the procurement procedures dictate.

The above findings notwithstanding, the Appeals Authority deemed it prudent to analyze the contention by the Appellant that if the requirement for the registered Power of Attorney was so important, the Respondent would have checked it and confirm its compliance during the tender opening ceremony and that failure to read it waives the Respondent's insistence for the requirement for the registration. The Appeals Authority hastens to agree with the Respondent's submissions in this regard that it is not the duty of the tender opening Committee to authenticate compliance of any document submitted by the bidders during opening ceremony of the tenders. Such powers are vested unto the Evaluation Committee in terms of Regulation 202(3) and (4) of GN.NO.446 of 2013. According to Clause 24.3 of the ITT which is a replica of Regulation 196 (4) of GN.NO.446 of 2013, the powers of the opening committee are to announce and record the contents provided in the tender and not otherwise. The Appeals Authority is of the further view that the Appellant ought to have requested for clarification from the Respondent during that ceremony as to why he did not read the Registered Power of Attorney as contended since Clause

21 of the BDS required so. The Appellant's failure ousts his rights to claim such irregularity, if at all occasioned, at this juncture as clearly provided for under Clause 24.5 of the ITT which reads;

Clause 24.5 Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer's representative shall indemnify the Procuring Entity against any claim or failure to read out the correct information contained in the Tenderers Tender.

(Emphasis Added)

In view of the above, the Appellant's contention regarding this matter fails and the law indemnifies the Respondent. Accordingly, the Appeals Authority's conclusion with regard to the first issue is that the Appellant's disqualification based on unregistered Power of Attorney was justified.

2. Whether the Appellant's bid price was lower than the proposed successful bidder

In resolving this issue, the Appeals Authority took cognizance of its findings in issue No. 1 above that the Appellant was disqualified at the preliminary evaluation stage. Therefore, it was not possible for the Respondent to compare the Appellant's bid price to that of the proposed successful tenderer. According to Clauses 29 and 33 of the ITT, price determination is carried out to the substantially responsive tenders that have passed all evaluation stages as specified in the Tender Document. Since the

Appellant's tender was not responsive from the beginning; he could not claim that his price was lower than that of proposed successful tenderer. It is a fact that on face of record the Appellant's bid was lower but on the procurement law context, this is not the case. Accordingly, the Appeals Authority conclusion with regard to this issue is that the Appellant's price was not lower than that of the proposed bidder.

3. Whether the bid validity period of the proposed bidder is shorter than that provided in the Tender Document.

In order to verify the authenticity of the Appellant's argument regarding this issue, the Appeals Authority revisited the tender receiving checklist which the Appellant relied on as well as the tender by the proposed successful tenderer. In the course of doing so, the Appeals Authority observed that item 3 of the checklist required the Respondent to indicate the number of days which the bidders had indicated, instead it was recorded "complied". When asked by the Members of the Appeals Authority regarding the matter, the Respondent submitted that the Tender Document provided the exact number of days which bidders were to comply, to wit 120 days. Since all bidders complied with the requirement, then, there was no harm occasioned to any. Moreover, the statement would have been verified by the Evaluation Committee. The Appeals Authority revisited the tender proceedings and observed that the tender opening ceremony was done on 25<sup>th</sup> October, 2016, thus, all bids were to be valid until 22<sup>nd</sup> February, 2017. The Appeals Authority revisited the proposed successful tenderer's tender and observed that it has complied with the requirement of the Tender Document by clearly mentioning that

his tender will be valid until 22<sup>nd</sup> February 2017 which is 120 days from the Tender opening date. Thus, the Appellant's assertion that the proposed successful bidder's tender was less for one day is not substantiated. Based on the above, the Appeals Authority is of the firm view that the Respondent's failure to insert the number of days in the tender checklist does not in any way prejudice the Appellant or any bidder. Furthermore, the tender opening checklist cannot be used as the basis of the tenders' evaluation or disqualification since the law does not provide so. Accordingly, the Appeals Authority's conclusion with regard to this issue is that the bid validity period of the proposed bidder is not shorter than that provided in the Tender Document.

#### 4. What reliefs, if any, are the parties entitled to

In resolving this issue, the Appeals Authority took cognizance of its findings on the first, second and third issues above and observed that the Appellant's disqualification was justified based on operation of the law and that the bid by the proposed successful tenderer complied with the bid validity period specified in the Tender Document, it goes without saying that the Appellant's Appeal lacks merits.

With regard to the prayers by the Respondent that the Appeals Authority dismisses the Appeal as well as the declaration that the disqualification of the Appellant was justified, the Appeals Authority accepts these prayers as the submissions and documents submitted so speak.

On the basis of the aforesaid conclusions, the Appeals Authority dismisses the Appeal in its entirety for lack of merits; and orders the

Respondent to proceed with other necessary steps to finalize the procurement in observance of the law.

It is so ordered.

Each party to bear its own costs.

This Decision is binding and may be enforced in accordance with Section 97(8) of the Act, as amended.

Right of Judicial Review as per Section 101 of the PPA/2011 explained to parties.

This Decision is delivered in the presence of the Appellant and their counsels and the Respondent this 20<sup>th</sup> January, 2017.



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MRS. R. A. LULABUKA

Ag. CHAIRPERSON

MEMBERS:

1. ENG. ALOYS MWAMANGA



2. MR. LOUIS ACCARO

