

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

**CONSOLIDATED APPEAL CASES  
NO. 38 & 39 OF 2013-14.**

**BETWEEN**

**M/S SIMBA NET (T) LTD.....1<sup>ST</sup> APPELLANT**

**M/S STARTEL TANZANIA LTD.....2<sup>ND</sup> APPELLANT**

**AND**

**TANZANIA NATIONAL PARKS.....RESPONDENT**

**M/S WIA COMPANY LIMITED....INTERESTED PARTY**

**DECISION**

**CORAM**

1. Hon. Augusta G. Bubeshi, J. (rtd) - Chairperson
2. Mr. Kesogukewe M. Msita - Member
3. Mrs. Nuru S.N. Inyangete -Member
4. Mr. Haruni S.Madoffe -Member

5. Mr. Ole-Mbille Kissioki

-Ag. Secretary

## **SECRETARIAT**

1. Mrs. Toni S. Mbilinyi -Principal Legal Officer
2. Ms. Violet Limilabo -Legal Officer
3. Mr. Hamisi O. Tika - Legal officer

## **FOR THE 1<sup>st</sup> APPELLANT**

1. Mr. Godwin Nesphory Nyaisa – Advocate EPIC Law Partners.
2. Mr. Stanley Attiya - General Manager
3. Mr Julius Mbuna - Sales Account Manager
4. Ms Edith James - Sales Account Manager

## **FOR THE 2<sup>nd</sup> APPELLANT**

1. Mr. Salehe Njaa - Adocate, Mzizima law Associates.
2. Mr. Mwinula Said - Deputy of Technical Operation.
3. Mr. Mjata Daffa - Sales Executive

## **FOR THE RESPONDENT**

1. Mr. Theophilo Alexander - Advocate, Principal  
Officer of the Respondent.
2. Mr. Herman B. Msaki - Senior Procurement Officer.
3. Mr. Jackinda Jairo - Senior IT/ Systems Analyst
4. Mr. Muhaji Junn - Assistant Procurement Officer

## **FOR THE INTERESTED PARTY**

1. Mr. Alex Mgongolwa - Advocate
2. Mr. Nuhu Mkumbukwa - Advocate
3. Mr. Patrick Nyindo - Enterprise Director
4. Mr. Brian Muruve - Corporate Manager

This decision was scheduled for delivery today 17<sup>th</sup> June, 2014 and we proceed to deliver it.

The appeal at hand was lodged by **M/s SIMBA NET (T) LIMITED and M/s STARTEL TANZANIA LIMITED** (hereinafter referred to as **the 1<sup>st</sup> and the 2<sup>nd</sup> Appellants**) against the **TANZANIA NATIONAL PARKS** commonly known by its acronym **TANAPA** (hereinafter referred to as **“the Respondent”**).

The said Appeal is in respect of Tender No. PA/037/2013-2014/HQ/GWND/37 for Provision of Services to Manage, Support and Maintain its WAN, VPN and Internet (hereinafter referred to as **“the tender”**).

According to the documents submitted to the public Procurement Appeals Authority (hereinafter referred to as **“the Authority”**), the facts of the Appeal may be summarized as follows:

The Respondent vide the Mwananchi and Daily News papers dated 2<sup>nd</sup> January, 2014 respectively as well as the TANAPA website, invited tenderers to submit their tenders for the tender under appeal. The tender was to be conducted through the National Competitive Bidding

procedures specified in Public Procurement Regulations, 2013 (hereinafter referred to as "**GN.446**").

The deadline for the submission of the tenders was set for 3<sup>rd</sup> February, 2014; whereby three tenders were received from the following firms;

<b>S/N</b>	<b>Tenderer's Name</b>	<b>Quoted Price in Tshs</b>
1	M/s Simbanet (T) Ltd	3,746,448,552.00 VAT Inclusive
2	M/s Startel (T) Ltd	1,800,302,400 VPN 184,686,400 AMC 279,566,190 VAT Inclusive
3	M/s WIA Company Ltd	862,399,992 WAN VPN 86,400,000/-Internet Capacity Exclusive of VAT

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

During the preliminary evaluation stage, tenders were checked for compliance with the eligibility criteria specified in the Tender Document (sometimes referred to as "**ITB**"). According to the Evaluation Report, all tenders were found to be substantially responsive and were subjected to detailed evaluation.

During the detailed evaluation, the tenders were verified to determine whether they met minimum experiences as set out in the bidding document for their Project Managers and similar works. The minimum volume of works and amount of liquid assets in a period specified in the document were also verified before qualifying for the correction of the arithmetic errors and price comparison. All tenders were found to be compliant to the minimum set out experiences, volume of works and liquid assets.

During the correction of arithmetic errors, the Evaluation Committee found out that the price quoted by WIA in their bid form reflected one year instead of two years. Hence they adjusted the same to conform to the two years period requirement. Thereafter they computed VAT element since the WIA's prices were indicated as VAT

exclusive. The Evaluation Committee then informed Wia of the correction of errors via a letter with reference No. TNP/HQ/C.10/02 dated 17<sup>th</sup> February, 2014. On 19<sup>th</sup> February, 2014 vide a letter with no reference number, the Interested Party (WIA Company Limited) replied that they agreed with the total tender price of Tshs. 2,239,167,981.12 as adjusted by the Committee after the correction of errors. Thereafter the Evaluation Committee ranked the tenderers as follows;

<b>S/N</b>	<b>Tenderer's Name</b>	<b>Corrected Price in Tshs</b>	<b>Ranking</b>
1	M/s Simba Net (T) Ltd	3,746,448,552.00	3 <sup>rd</sup>
2	M/s Startel (T) Ltd	2,264,514,990.00	2 <sup>nd</sup>
3	M/s Wia Company Ltd	2,239,167,981.12	1 <sup>st</sup>

Post qualification was carried out to the Tenderer M/s WIA Company Limited whose tender was ranked No. 1.

Having completed the evaluation process, the Evaluation Committee recommended the award of the tender to M/s Wia Company Ltd at a contract price of Tshs. 2,239,167,981.12 VAT inclusive.

The Tender Board at its meeting held on 17<sup>th</sup> March, 2014, approved the recommendation by the Evaluation Committee and hence awarded the tender to M/s Wia Company limited.

On 4<sup>th</sup> April, 2014, the Respondent vide a letter referenced TNP/HQ/B.20/09 notified the tenderers of their intention to award the tender to M/s WIA Company Ltd. The said letter was received by the Appellants on 15<sup>th</sup> April, 2014.

Being dissatisfied with the Respondent's intention to award the tender to M/s WIA Company Ltd, the Appellants on 16<sup>th</sup> and 17<sup>th</sup> April, 2014 respectively, sought for administrative review with the Respondent's Accounting Officer complaining on the following grounds;



## **1<sup>ST</sup> APPELLANT (SIMBA NET)**

- i. That, the awarded price is different from the read out price. Furthermore, the successful tenderer did not quote AMC and their price was VAT Exclusive. If the AMC and Excise duty elements are excluded from the tenders of M/s Simba Net and M/s Startel and VAT is loaded to WIA's tender price, then, M/s Simba Net would have won the tender.
- ii. That, WIA's tender was not substantially responsive (not successful) because they did not include maintenance cost.

## **2<sup>ND</sup> APPELLANT (STARTEL)**

- i. The notice of Intention to award was not issued immediately as required by Section 60(3) of the Act.
- ii. The notice of Intention to award did not include the reasons as to why the tenderers were not successful.

- iii. Read out price of the successful tenderer was abnormally low compared to the market price and same should have been rejected pursuant to Regulation 17(1) (d) of GN.NO. 446 of 2013. Furthermore, the price indicated on Respondent's intention to award letter was different from the read out price during tender opening.
- iv. That, paragraph four of the Notice of Intention to award letter was misleading as it requested tenderers to contact the signatory of the letter for any inquiry within fourteen days contrary to the requirement of Section 60(3) of the Act, which requires the accounting officer to inform all bidders of the intention to award giving them fourteen days within which to submit their complaints.

On 28<sup>th</sup> April, 2014 the Respondent's Accounting Officer issued his decision by dismissing the applicants' complaints and insisted to continue with their intention to award the tender as proposed.

On 28<sup>th</sup> and 29<sup>th</sup> April, 2014, the Respondent communicated their decision to the Appellants respectively.

Being aggrieved by the Respondent's decision, the Appellants lodged their Appeals to the Authority on 9<sup>th</sup> and 12<sup>th</sup> May, 2014 respectively.

### **SUBMISSIONS BY THE 1<sup>ST</sup> APPELLANT**

According to the documents submitted to the Authority as well as oral submissions by parties during the hearing, the Appellant's grounds of appeal can be summarized as follows;

First, that the evaluation criteria used by the Respondent contravened the procedure provided for in the Public Procurement Act No. 7 of 2011 (hereinafter referred to as "**the Act**") and **Public Procurement Regulation of 2013 (hereinafter referred to as "GN No. 446 of 2013")**.

Second , that the Respondent's letter of intention to award the tender to the successful tenderer dated 8<sup>th</sup> April 2014 was unfair and contravened the provision of the Act and its Regulations on the reason that;

- i. The evaluation of the tender did not comply with the requirements of the Tender Document provided for under Clause 1.2 of the Instruction to Bidder (hereinafter referred to "**ITB**") and item 2 of the Bid Data Sheet (hereinafter referred to as "**BDS**").
- ii. During tender opening ceremony, the read out price for M/s Wia Company Ltd was Tshs. 948,799,992.00 excluding VAT and the same included Internet, VPN but it did not include AMC.
- iii. Even if there had been correction of errors in the price by M/s WIA Company Ltd, the same could not have remained the 1<sup>st</sup> lowest evaluated tenderer instead M/s Startel (T) Ltd could have been the lowest.

Third , that the correction of errors was not done in accordance with Clause 29.1 (a) (b) of the Instructions To Bidder (hereinafter referred to as "ITB") as alleged by the Respondent, rather the Respondent was the one who filled in the price schedule for M/s WIA Company Ltd.

Fourth, that the Respondent contravened requirements of Section 47 (c) of the Act and Regulations 90(4), (5) and (18) of GN. No. 446 for failure to maximize competition and achieve value for money.

Fifth, the 1<sup>st</sup> Appellant has been a previous service provider of the Respondent, thus, they are aware of the technical requirements of the Respondent's tender.

Sixth that the 1<sup>st</sup> Appellant has been in such business for more than years **(sic)**. Thus, they understand the costs for running the system and that they are sure that the price quoted by the successful bidder could not promote efficiency to the system.

Finally the 1<sup>st</sup> Appellant prayed for the following orders;

a) A declaration that the Respondent did not comply with the rules and regulation stipulated by the Act and GN. No. 446 of 2013.

b) A declaration that Respondent is bound by procurement process as provided for under the law.

c) Nullification of the tender process and order for re-tendering.

Alternatively,

d) The order that, the Respondent is to award the tender to them.

e) Payments of the costs and incidental to the tendering process and the appeal.

f) Such other orders and/or reliefs as the Authority may deem just and fit to grant.

## **SUBMISSION BY THE 2<sup>ND</sup> APPELLANT**

The 2<sup>nd</sup> Appellant's grounds of appeal as deduced from their written as well as oral submissions during the hearing may be summarized as follows;

First that they were among the three tenderers who participated in the tender under appeal.

Second, that The Tender Document required the tenderer to quote their price for three items as follows;

- a) Cost for provision of Bandwidth management for WAN VPN for satellite bandwidth for 43 remote sites.
- b) Cost for services, repair, support and maintenance (AMC) for Hub and 43 remote sites
- c) Cost for provision of bandwidth management for internet feed; but M/s WIA Company Ltd had quoted just for two items, and also did not quote for AMC.

Third, that M/s WIA Company Ltd quoted price was VAT exclusive and did not state whether the same was for one or two years. If at all their price was for two years, then the price quoted by the remaining two tenderers were lower than theirs.

Finally the 2<sup>nd</sup> Appellant prayed that the Respondent do the following;

- a) Awards the tender to them.
- b) Be estopped from awarding the tender M/s WIA Company Ltd
- c) Compensate them a sum of Tshs. 10,000,000.00

## **REPLIES BY THE RESPONDENT TO THE 1<sup>ST</sup> APPELLANT**

The Respondent's replies as deduced from their written and oral submissions during the hearing may be summarized as follows;



That, the criteria used to evaluate tenders was the one set out in the Tender Document and in accordance with the requirements of the Act and its Regulations.

That, the tender submitted by M/s WIA Company Ltd was substantially responsive in accordance with Regulation 205 (a-c) of GN No. 446 of 2013, and their quoted price was for all three items and included AMC.

That, the Evaluation Committee computed the price by M/s WIA Company Ltd in accordance with Clause 29.1 (a) of the ITB.

That, the decision to award M/s WIA Company Ltd was in accordance with Section 47 (c) of the Act and Regulation 224, since post qualification was carried out to ensure that quality was not compromised in order to achieve the value for money principle.

That, the decision to float the tender was reached after observation of unsatisfactory performance by the 1<sup>st</sup> Appellant. Further that, Option two submitted by them

was ignored during evaluation since it was contrary to the Respondent's specifications.

That, simply because the 1<sup>st</sup> Appellant was the previous service provider does not automatically guarantee them to continue working with the Respondent, since there are other good service providers in the market who could perform better than them. Hence, the needs to administer the procurement under open tendering method (NCT).

That, the decision to award the tender to M/s WIA Company Limited was based on both the total price for two years and post qualification.

That, the decision to award the tender was approved by the Tender Board and the same was communicated to the Accounting Officer on 18<sup>th</sup> March 2014. The Accounting Officer approved the adjudication (**sic**) of Tender Board on 4<sup>th</sup> April 2014.

That, an intention to award the tender was issued within two working days of the required three days (after

approval). Since 5<sup>th</sup> and 6<sup>th</sup> April 2014 were Saturday and Sunday respectively, and 7<sup>th</sup> April 2014 was a public holiday (Karume day), the Accounting Officer notified all tenderers on 8<sup>th</sup> April 2014 through PE's website. Thus the cool off period commenced on 8<sup>th</sup> April 2014 and was due to expire on 22<sup>nd</sup> April 2014 and not 17<sup>th</sup> April 2014 as Startel (T) Ltd pointed out.

That, the read out price was not the final price. Rather, the lowest evaluated tender is the one which has complied with all the criteria set out in the Tender Document.

The Respondent prayed for the dismissal of the Appeal for lack of merits.

## **REPLIES BY THE RESPONDENT TO THE 2<sup>ND</sup> APPELLANT.**

The Respondent's replies as deduced from their written and oral submissions during the hearing may be summarized as follows;

That, the 2<sup>nd</sup> Respondent has raised some new issues which were not submitted before the Accounting Officer for deliberations.

That, decision to award the tender was approved by the Tender Board and the same was communicated to the Accounting officer as per Regulation 231 (1) of GN. No. 446 of 2013.

That, the intention to award the tender was issued two days after the approval by the Accounting Officer of the Tender Board decision as elaborated above.

That, the read out price is not the only the criterion to award the tender rather, it the lowest evaluated tender which has complied with all the criteria set out in the Tender Document.

Finally the Respondent prayed for the dismissal of the Appeal for lack of merits.

## **INTERESTED PARTY'S RESPONSE TO THE STATEMENTS OF APPEAL.**

According to the documents availed to the Authority as well as oral submissions during the hearing, the Interested Party's arguments may be summarized as follows;

Some of the Appellants grounds of appeal before the Authority such as; impropriety of the evaluation committee, decision to correct errors by computation of VAT and the contention that M/s Startel tender had the lowest price were not before the Accounting Officer for deliberation and decision. Therefore, they should not be taken on board and contravenes the law.

That, their total price in their tender included the AMC charges. This is evidenced by their price schedule. However, the Bid Form contained in the Tender Document did not explicitly or separately reflect AMC charges. AMC slot was left blank because it was part of the read out prices.

That, during the tender opening ceremony, only prices in the Bid Forms were read out and not the ones in the price schedule. However, there is no harm in reconciling/comparing the price in the Bid Form and the ones in the price schedule so long as the same does not increase the quoted price. Thus, non inclusion of AMC price does not render their tender non responsive or defective.

That, the Procuring Entity had powers to calculate VAT in prices which do not include VAT. Thus, the contention that their price did not include VAT has no base. However, in any case, the said deviation was not material.

That, the omission to quote their tender for 24 months can be cured by multiplying the monthly unit price they had quoted by 24 to get the 24 months period required. The mischief is curable under Clause 29 (1) (a) and (b) of ITB and Regulation 207 of GN.NO. 446 of 2013 since the same do not change their tender price.

That, the allegation that their tender price would have been higher compared to that of M/s Startel if their tender would have been loaded with VAT is baseless, since their tender price was lower compared to theirs.

That, the current grounds of Appeal by M/s Simba Net before the Authority are new and were not dealt with by the Accounting Officer. Therefore, the same cannot be raised at this juncture. Their former complaints before the Accounting Officer were all dealt with effectively.

That, with regard to the prices, the Interested Party reiterated what they had submitted above.

That, with regard to the arguments that the interested party would have the same price two years in a row without change is baseless since, all tenderers knew that they were tendering for a two years contract. In any case, they did not state in their tender that their price was for the first or the second year only.

That, M/s Simba Net's grounds 1 and 2 of their Appeal are based on trivial technicalities and the same are

intended to minimise competition and divulge procurement principles such as value for money, promotion of economy, efficiency and value for money.

That, the contention that M/s Simba Net had worked with the Respondent for the past 3 years and that they are not sure of the Interested Party's competence to perform the task is baseless, since they have no proof that the Interested Party cannot perform. However, the Respondent did a post qualification on their tender and was satisfied with their findings.

Therefore, the Interested Party prayed for dismissal of the Appeals with costs and any other relief(s) as the Authority may deem just and fit to grant.

### **ANALYSIS BY THE AUTHORITY.**

Having analysed the parties oral as well as written submissions, the Authority proceeded to frame the following issues;



- **Whether the intention to award the tender to M/s WIA Company Limited is proper at law;**
- **Whether the Appellants were unfairly disqualified;**
- **Whether communication of the letter of Intention to award the tender was proper at law;**
- **To what reliefs, if any, are the parties entitled to.**

From the outset, the Authority wish to point out that this is an appeal that emanated from the decision of the Respondent Accounting officer that was given before the award of the tender. In view of that fact, the Authority will confine itself to the grounds of appeal which were complaints subject of the then review by the Respondent Accounting Officer. The Authority has taken a judicial note of the applicants (now appellants) grounds for the then administrative review before the Respondent

Accounting officer. Therefore any new grounds by the parties in this appeal shall not be entertained at this stage.

For that reason and for avoidance of doubt, grounds number two, three and four only will be entertained for the first Appellant and not the others as they were not reviewed by the Respondent's Accounting Officer. As for the second Appellant on the same vein only grounds two and three will be entertained by the Authority.

Having clarified as above, the Authority now proceeds with analysis of the issues of this appeal.

**1. Whether the intention to award the tender to M/s WIA Company Limited is proper at law;**

In addressing this issue, the Authority revisited the Appellants grounds of Appeal to wit;

- That, the successful tenderer's price did not include the AMC element;

- That, their quoted price was different from the awarded price; and that, their final price was not corrected in accordance with the law.

In order to examine the same properly, the Authority framed the following two sub issues, namely;

**a. Whether the successful tenderer's quoted price did not include the AMC element.**

**b. Whether correction of the successful tenderer's quoted price was justified**

**a. Whether the Interested Party's quoted price did not include the AMC element.**

In analyzing this sub issue, the Authority went through the Interested Party's bid form and it realized that the amount quoted was Tshs. 862,399,992 for VPN solution and Tshs. 86,400,000 for the internet capacity, both VAT exclusive.

It also went through the Price schedule which in essence is a breakdown of the figure indicated in the bid form and

realized that all the three elements required in this tender were reflected, including the Hub Maintenance, Support and Monitoring (that is AMC) whose charges per month were indicated as Tshs. 4,666,666.

The Authority agrees with the Appellants that by reading the amount stated in the Interested Party's bid form, one can never realize how much amount of money was quoted for each element of the tender package. However, the Authority is satisfied that the breakdown of each element was undoubtedly stated in the price schedule.

In view of the above, the Authority's conclusion with regard to the first sub issue is that the Interested Party's quoted price included the AMC element.

**b. Whether correction of the successful tenderer's quoted price was justified**

In ascertaining this sub issue, the Authority went through ITB clause 29.1 (a) and Regulation 207 of the GN 446 of 2013 which provide guidance in this respect.

For ease of reference, the said Clause and Regulation are reproduced hereunder;

Clause 29.1 of the ITB reads as follows:

"29.1 Bids determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected by the evaluation committee as follows:

- (a) if there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, and the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;

Regulation 207 (2) of the GN.NO.446 reads as follows:

- "207 (2) Notwithstanding regulation 202 (5) -
- (a) a procuring entity shall correct purely arithmetical errors that are discovered during the examination of tenders and the procuring entity shall give prompt notice of any such correction to a tenderer that submitted the tender;
  
  - (b) a procuring entity may regard a tender as responsive even if it contains **minor deviations that do not materially alter or depart** from the characteristics, terms, conditions and other requirements set forth in the solicitation documents or it contains errors or **oversights that are capable of being corrected without touching on the substance of the tender;****

- (c) any such deviations shall be quantified to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders”.

Having gone through the quoted Regulation and ITB Clause and the Interested Party’s bid document, particularly on the Price Schedule Section, the Authority is in agreement with the Appellants contention that the Respondent was not justified in invoking Clause 29.1(a) of the ITB in carrying out the purported correction of errors. This is because, inclusion of VAT to the successful tenderer’s and extrapolation of the bid price from one year to a two year basis by the Respondent does not amount to purely arithmetic correction of errors as envisaged by ITB Clause 29 (1) (a) and Regulation 207 (2)(a) of GN.NO. 446 of 2013. However, after hearing the Interested Party’s oral submission in this regard, the Authority is of the settled view that what the Respondent did was a correction of “oversights that are capable of being corrected without touching on the substance of the

tender” in conformity with Regulation 207 (2) (b) and (c) of GN.NO.446 of 2013.

The Authority wishes to re-iterate that, exclusion of VAT element is an oversight that can be readily corrected, since VAT is provided under the law and is a fixed variable. That is why, the Successful Tenderer concurred with revised tender price taking into account the VAT element and the two years duration after being asked by the Respondent. The two years extrapolation of the tender price was also acceptable to them because it did not change the unit price and they had indicated the duration on page 21 of their Tender Document.

In view of the above findings, the Authority’s conclusion with regard to second sub-issue is that, correction of the successful tenderer’s quoted price was justified. Accordingly, the Authority conclusion with regard to the first issue is that the intention to award the tender to M/s WIA Company Limited was proper at law.



## **2. Whether the Appellants were unfairly disqualified;**

In resolving this issue, the Authority took cognizance of its findings and conclusion on the first issue and observed that, since the intention to award the tender to the Successful Tenderer was justified, accordingly, the Authority's conclusion with regard to the second issue is that, the Appellants disqualification was proper at law.

## **3. Whether communication of the letter of Intention to award the tender was proper at law;**

In ascertaining this issue, the Authority analysed the Appellants' contention that the notice of intention to award the tender was not served to the tenderers immediately in terms of Section 60(3) of the Act.

Section 60(3) of the Act reads as follows:

**"60(3) Upon receipt of notification, the accounting officer shall, immediately thereafter issue a notice of**

**intention to award the contract to all tenderers who participated in the tender in question giving them fourteen days within which to submit complaints thereof, if any.”**

The Authority also analysed the Respondent’s replies that the three days following the 4<sup>th</sup> April, 2014 when the Accounting Officer signed the letter of intention to award notice, fell on a weekend (Saturday and Sunday) and one in a public holiday 7<sup>th</sup> April, 2014 (Karume Day).

The Authority agrees with the Respondent that the said three days were not to be considered in counting the fourteen days cool off period. This is by virtue of the provisions envisaged under Section 60 (1) (e) and (f) and (2) of the Interpretation of Laws Act Cap 1 (RE: 2002) which reads as follows;

“60(1) (e) where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the next day that is not an excluded day;

(h) where an act or proceeding is directed or allowed to be done or taken on a certain day, or on or before a certain day, then, if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day that is not an excluded day.

(2) For the purposes of this section, "excluded day" means Saturday, Sunday or public holiday throughout or in that part of which is relevant to the event, act, thing or proceeding concerned”.

From the explanations above and the Respondent's submission that the notice of intention to award was also displayed on their website on the 8<sup>th</sup> April, 2014, and since the Notice of Intention to award the tender was received by the Appellants on the 15<sup>th</sup> April, 2014; that is, eight days after the 8<sup>th</sup> April, 2014 which was the first day of the cool off period, the Authority is satisfied that the notice issued was within the cool-off period.

Accordingly, the Authority's conclusion with regard to the third issue is that, the communication of the notice of Intention to award the tender was proper at law;

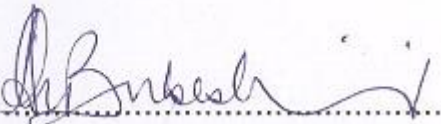
**4. To what reliefs, if any, are the parties entitled to.**

Having established that the intention to award the tender to M/s WIA Company Limited is proper at law, that the Appellants disqualification for the tender was justified and that the Notice of Intention to award the tender was justified, it follows that the Appeals at hand have no merits. Consequently, the same are hereby dismissed

and each party is to bear their own costs. The Respondent may proceed with subsequent procedures pertaining to this tender.

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

This Decision is delivered in the presence of the Appellants, the Respondent and the Interested Party this 17<sup>th</sup> June, 2014.



HON. AUGUSTA G. BUBESHI, J (RTD)  
**CHAIRPERSON**

**MEMBERS:**

1. MR. KESOGUKEWELE M. MSITA 

2. MRS. NURU S.N. INYANGETE 

3. MR. HARUNI S. MADOFFE 