

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

**APPEAL CASE NO. 2 OF 2013/14**

**BETWEEN**

**M/S UNITED TALENTS**

**SERVICES LIMITED.....APPELLANT**

**AND**

**TANGA CITY COUNCIL .....RESPONDENT**

**DECISION**

**CORAM**

- |                                |               |
|--------------------------------|---------------|
| 1. Hon. A.G. Bubeshi, J. (rtd) | -Chairperson  |
| 2. Mr. H.S. Madoffe            | -Member       |
| 3. Mr. F.T. Marmo              | -Member       |
| 4. Mrs. N.S.N. Inyangete       | -Member       |
| 5. Ms. F.R. Mapunda            | -Ag.Secretary |

**SECRETARIAT**

- |                      |                 |
|----------------------|-----------------|
| 1. Ms. Violet Simeon | - Legal Officer |
| 2. Mr. Hamisi Tika   | - Legal Officer |

## **FOR THE APPELLANT**

Mr. Asanterabi Mfuko - Chief Executive Officer.

## **FOR THE RESPONDENT**

1. Mkama B. Makori - Head of PMU
2. Richard Mtelewa -Accountant, Chairman -Evaluation Committee.

This decision was scheduled for delivery today 6<sup>th</sup> August, 2013 and we proceed to deliver it.

The Appeal at hand was lodged by **M/s UNITED TALENTS SERVICES LIMITED** (hereinafter referred to as "**the Appellant**") against the Tanga City Council (hereinafter referred to as "**the Respondent**").

The said Appeal is in respect of Tender No **LGA/128/2013/2014/NC/01** for Revenue Collection. The said tender had twenty six Lots but the Appeal at hand is confined to Lot No. 5 which was for **Revenue Collection outside Mgandini Market within Tanga Municipality** (hereinafter referred to as "**the tender**").

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

The tender under Appeal was publicly invited through Majira newspaper dated 16<sup>th</sup> April, 2013.

The said tender was conducted through the National Competitive Tendering Procedures specified in the Public Procurement (Goods, Works, Non- Consultant Services and disposal of public assets by Tender) Regulations, 2005 (hereinafter referred to as "**the GN 97 of 2005**").

The deadline for submission of tenders was set for 21<sup>st</sup> May, 2013 whereby four tenders were submitted from the following firms;

<b>S/N</b>	<b>TENDER'S NAME</b>	<b>QUOTED AMOUNT (IN TSHS) PER MONTH</b>
1.	M/s Mabuma Investments	5,000,000/-
2.	Ridhiwani Mwinyihari	4,770,000/-
3.	United Talents Services Limited	5,050,000/-
4.	Kibimso	4,700,000/-

The tenders were then subjected to three stages of evaluation namely; Preliminary Evaluation, Detailed Evaluation and Financial Comparison.

During preliminary evaluation, tenders were checked for completeness of their Bids and compliance with the Eligibility Criteria. During that process, all four tenders were found to be substantially responsive to the tender requirements.

Having passed the Preliminary Evaluation stage, the four tenders were then subjected to Detailed Evaluation whereby the tender by M/s United Talents was disqualified for failure to

comply with the criterion of experience of similar nature as stipulated in the Tender Document. The documents attached to the Appellant's tender indicated that they had experience in distribution of bills to customers and not in collection of revenues.

The remaining three tenders were subjected to price comparison whereby the tender by M/s Mabuma Investments Company Ltd scored 12 points and their quoted price was considered to be the highest evaluated price.

The Evaluation Committee therefore, recommended award of the tender to M/s Mabuma Investments Company Ltd for the quoted price of Tshs. 5,000,000/- per month.

The Tender Board at its meeting held on 28<sup>th</sup> June, 2013, approved the award of the tender as recommended by the Evaluation Committee and directed negotiations between the Respondent and the successful tenderer to be carried out on basis that the estimate of the revenue to be collected was low compared to the size of the market.

On the same date, that is 28<sup>th</sup> June, 2013, the Respondent vide a letter referenced TCC/PMU/VOL I/194 communicated the award of tender to the Successful Tenderer.

On 03<sup>rd</sup> July, 2013, the Respondent vide a letter referenced TCC/PMU/VOL.IV/108 informed the Appellant that their tender was unsuccessful due to lack of experience in revenue collection.

Having received the Respondent's letter and being dissatisfied with their disqualification, on 8<sup>th</sup> July, 2013, the Appellant lodged their Appeal to the Public Procurement Appeals Authority (hereinafter referred to as "**the Authority**").

### **SUBMISSIONS BY THE APPELLANT**

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

That, according to the tender advertisement, tenders were to be opened at the Tanga City Council's hall at 10.00 a.m immediately after the deadline for submission of the same. To

their surprise, the tender opening took place at the offices of the Planning Department of the Respondent's at 11.08 a.m without notice of change of venue being given to them contrary to the law.

That, during the tender opening, tenders were opened without their prices being read out. This act of the Respondent made various tenderers to air their grievances on this irregularity and the Respondent rectified the said anomaly, although it created some doubts over the correctness of the entire tender process.

That, their quoted price was higher than any other tenderer for Lot No. 5 and they had experience of over ten years in revenue collection. Thus, they were responsive and qualified for the award of this tender.

That, before signing of the contract, a successful tenderer was required to deposit a sum equal to three months collection as security for the tender to the Respondent. The Respondent therefore, had an opportunity of assessing their capability and if they were to default, the Respondent would have deducted **their dues from the deposited security and other steps could have been taken according to the terms of the contract.**

That, the letter which notified them to be unsuccessful did not indicate who won the tender and the awarded amount. Moreover, the said letter did not indicate what the aggrieved tenderer should do upon being dissatisfied with the tender process. Thus, the Respondent curtailed their rights to question the tender outcome.

In addition to the above anomalies on the part the Respondent, their statement of reply lodged before this Authority indicated M/s Lemita Company to have won the disputed tender while the said tenderer had never participated in this disputed tender process.

The Appellant therefore prayed for the following orders;

- i. That the tender process be annulled
- ii. The award of tender to the successful tenderer be nullified and the same be awarded to them.
- iii. Costs of this appeal to the tune of Tshs. 12,250,000/= be given to them as general damages.

## **SUBMISSIONS BY THE RESPONDENT.**

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

That, it is true that the Appellant's tender price was the highest, but they failed to comply with the criterion of experience in works of similar nature as stipulated in the Tender Document.

That, the Appellant indicated to have experience in distribution of bills to customers and not of revenue collection. Furthermore, the Appellant had failed to annex any documentary evidence in their tender indicating that they had previously been engaged in revenue collection. Lack of such proof made it difficult for the Respondent to ascertain whether the Appellant had such experience or not. Therefore, they did not find them to have qualified for award of this tender.

That, the Appellant had no Tax Clearance Certificate from Tanzania Revenue Authority related to revenue collections. The Tax Clearance Certificate attached to the Appellant's tender related to electrical meter reading for the year 2012. Lack of that certificate made the Appellant to be ineligible for award of this tender.

With regard to the change of venue, the Respondent submitted that, it is true that venue for the tender opening was changed. However, the said change was occasioned by the former venue set for opening to be under repair. Thus, due to that reason, it was not convenient, for tenders to be opened at an area where repairs were going on.

That, the venue in which the tenders were opened belongs to them, and was only 750 meters away from the original venue. Indeed, the said changes did not prejudice the Appellant as their representative attended the ceremony.

That, the inclusion of the name M/s Lemita Company Limited as the successful tenderer in the Statement of Reply was a typing error. The award of the tender under Appeal was made to M/s Mabuma Investments who was the highest evaluated tenderer. M/s Lemita Company Limited had been awarded a tender relating to advertisements through Billboards which was also advertised by them.

The Respondent therefore, prayed for dismissal of the Appeal and prayed further that the Appellant's request for costs should

not be granted since their Tender Document did not indicate that right to the tenderers.

### **ANALYSIS BY THE AUTHORITY**

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

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

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

#### **1.0 Whether the tender process was conducted in accordance with the law**

In resolving this issue the Authority considered the Appellant's prayer that the tender process be nullified as the entire tender

process was conducted in contravention of the law. In order to consider this prayer the Authority deemed it necessary to review the tender process. In reviewing this tender process the Authority examined the oral and documentary evidence submitted vis-à-vis the applicable law and the Tender Document for purposes of ascertaining if the tender process was flawed or not. In doing so, the Authority confined its analysis on the specific areas complained against by the Appellant and framed the following sub-issues as guidance:

- **whether the tender opening was conducted in accordance with the law**
  
- **whether the evaluation process was conducted in accordance with the law**
  
- **whether the communication of tender results to the Appellant was done in accordance with the law**

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

**Sub issue (i): Whether the tender opening was conducted in accordance with the law**

In resolving this sub issue the Authority revisited the Appellant's argument that the tender opening ceremony was not conducted in accordance with the law, in that, the venue and time for tender opening was changed without prior notice to the tenderers. The Appellant submitted further that, tenders were opened without their prices being read out until the Respondent was forced to do so by tenderers, thereby raising a lot of doubt as to the correctness of the whole tender process.

In reply thereof, the Respondent submitted that, the venue for tender opening was changed due to renovations that were going on at the specified area. It was submitted further that, the tenderers or their representatives were duly informed upon arrival about the said changes and the Appellant's representatives were present at the time tenders were opened. Accordingly, they had never been prejudiced by the change of venue. Furthermore, the Respondent contended that, all tender prices were read out as required by law except for the Pre-qualification document that were submitted as they did not contain tender prices.

After considering the arguments by both parties the Authority observed that, the Appellant's argument had centred on the tender opening process whereby according to the Public Procurement Act, Cap 410 of 2004 (hereinafter referred to as "**the Act**") such kind of complaints are required to be lodged to the Accounting Officer within twenty eight days from the date the tenderer became aware of the circumstances giving rise to a complaint.

The Authority wishes to enlighten the Appellant that according to the Act and its Regulations there are two alternative avenues that may be followed by a complainant to seek redress.

Under **the first avenue** dissatisfied tenderers are required to invoke the three stages of review where a complaint or dispute arises before a procurement contract enters into force. In such a situation, a dissatisfied tenderer has to start the review procedures by invoking Section 80 of the Act which requires complaints to be submitted first to the Accounting Officer. Upon being dissatisfied with the Accounting Officer's decision or if the Accounting Officer fails to issue a decision within the prescribed time, the tenderer has the right to file their complaint to PPRA pursuant to Section 81 of the Act. In case they are dissatisfied with PPRA's decision or if PPRA fails to issue a decision within

the stipulated time, then, the tenderers have to file their Appeal to this Authority pursuant to Section 82 of the Act.

**The second avenue** comes into play only when the procurement contract has entered into force as per Section 55(7). A dissatisfied tenderers is required to invoke Section 82(2)(a) of the Act, which requires tenderers to refer their complaint or dispute directly to this Authority.

Based on the above explanations, the Authority observes that, the Appellant's complaints in relation to irregularities that were noted during the tender opening ought to have been lodged to the Respondent within twenty eight days from the date the Appellant became aware of the said anomalies. Thus, the Appellant's act of raising the issues of tender opening after award of tender had already been communicated to the successful tenderer contravenes Section 80 (1) and (2) which provides as follows;

**S.80(1) "Complaint or disputes between procuring entities and suppliers, contractors or consultants which arise in respect of the procurement proceedings and which cannot be resolved by mutual agreement shall be reviewed and decided**

**upon by the Accounting Officer, Chief Executive Officer of a Procuring Entity...”** (Emphasis added)

S.80(2) **“The head of the procuring entity or of the approving authority shall not entertain a complaint or dispute unless it is submitted within twenty eight days from the date supplier, contractor or consultant had become aware of the circumstances giving rise to a dispute or complaint** or when that supplier, contractor or consultant should have become aware of those circumstances, whichever is earlier”.

Based on the above findings the Authority is of the settled view that, at this point it does not have the jurisdiction to entertain issues that had arisen during the tender opening since the Appellant was required to exhaust the review mechanism as elaborated under the first avenue. Therefore, the Authority finds that it has no power to determine complaints which relate to the tender opening process.

**Sub issue (ii) whether the evaluation process was conducted in accordance with the law**

In resolving this sub issue, the Authority revisited the Appellant’s argument on this point that, they have been unfairly

disqualified from the tender process since they had the requisite experience in revenue collection for over ten years. The Appellant contended further that, they had quoted the highest price among all the tenderers, hence, they qualified for the award of the tender. Thus, it is the Appellant's view that, the evaluation process was not conducted in accordance with the law. Therefore they requested the Authority to review the same so as to establish whether the Respondent's act of disqualifying them was in accordance with the law.

In reply thereof, the Respondent's submitted that, although the Appellant's tender had the highest price, they failed to comply with the criterion of similar contracts experience as they attached documents which indicated their experience in distribution of electrical and water bills to customers instead of revenue collections.

In ascertaining the validity of the contentious arguments by parties' the Authority revisited the Tender Document issued by the Respondent in order to satisfy itself on the experience requirement that was to be complied by tenderers when submitting their tenders. In doing so, the Authority observed that experience requirement was provided for under Clause 2(iv) of the Tender Document. For purposes of clarity the

Authority reproduces the said clause which reads in Kiswahili as follows;

**(2) BARUA ZA MAOMBI ZIAMBATANISHWE NA MAELEZO NA VIVULI VYA;-**

- iv. Maelezo ya kazi alizowahi kufanya(uzoefu wa ukusanyaji wa mapato ya ushuru) na vielelezo usiyopungua miaka miwili".**  
(Emphasis added)

Literally translated as;

"application letters should be accompanied with copies of;

- iv. Explanation of contracts performed (experience in revenue collection) and supporting document of atleast a period of two years experience.

Having noted that, the tenderers were required to show two years experience in contract of similar nature, the Authority revisited the Evaluation Report and noted that during detailed evaluation the Appellant's tender was disqualified for failure to comply with the said criterion of experience in contract of similar nature.

In order to verify if the disqualification of the Appellant based on the said criterion was proper, the Authority revisited the

tender submitted by the Appellant and observed that, they had indicated to have performed the following activities as works of a similar nature;

- a) Distribution of water bills – Tanga – UWASA
- b) Collection of Revenue for parcel transportation within and outside the country – East African Courier Ltd
- c) Distribution of Electricity bills – TANESCO – Tanga and Arusha

Based on the experience listed by the Appellant it is only one contract that was done with East African Courier Limited that related to revenue collection. However, upon reviewing further the documents attached to the Appellant's tender, it was noted that, there were only two letters from previous clients and both of them indicated that the Appellant was awarded the contract for distribution of water bills and electricity bills. There was no document from East African Courier Ltd to establish their alleged experience in revenue collection.

Upon being asked by Members of the Authority the relevance of the annexed contract experience, the Appellant stated that the two attachments related to the contract for supply of bills but they contended further that the said supply involved also revenue collection. The Authority revisited the said contract

documents with Tanesco and Dawasco to ascertain the Appellant's submissions but none of them had a clause related to revenue collection. However, they conceded that they did not attach evidence from East African Courier Ltd to demonstrate relevant experience in revenue collection.

Based on the above facts the Authority, is of the view that, the Appellant did not comply with the requirement of two years experience in works of a similar nature as there were no evidence attached to their tender to prove the said experience as per the requirements of the Tender Document. The Appellant was required to show experience in revenue collection but none of the documents attached to their tender proved that they had the said experience.

The Authority is of the firm view that, the Appellant's failure to substantiate during the hearing that they had attached to their tender the requisite information that proves compliance with the experience criterion entails that they had failed to adhere to the requirements of the Tender Document.

Furthermore, the Authority considered the Appellant's argument that, the award of the tender to the successful tenderer be nullified and finds it prudent to establish if the said award was

made in accordance with the law. In doing so, the Authority revisited the Evaluation Report and noted that the tender of the successful tenderer was indicated to have complied with all the requirements of the Tender Document.

In order to substantiate if the successful tenderer had complied with all the requirements as was indicated in the Tender Document, the Authority reviewed the tender submitted by them and observed that, they too did not meet the two years experience in works of a similar nature. The successful tenderer indicated their experience as reproduced herein under;

<b>Na</b>	<b>Taasisi uliyofanya kazi</b>	<b>Aina ya Kazi</b>	<b>Kipindi cha Mkataba</b>	<b>Thamani ya kazi kwa Mwaka</b>
	Halmashauri ya jiji Tanga	Kukusanya ushuru-Gulio la Tangamano na Pongwe	2013/2014	Tshs.814,500/-

The above quoted table clearly indicated that the successful tenderer at the time of tendering did not have the required experience.

During the hearing the Respondent was asked to explain why they had awarded the tender to a tenderer who did not comply with the two years experience criterion and they submitted that, the successful tenderer had the required experience because they had been working together in previous years.

The Authority revisited the tender of the successful tenderer and noted that, there was no evidence attached to prove the required experience apart from the contents of the table reproduced herein above which showed that they did not have required experience at the time the bids were submitted. That indicated that the tender of the successful tenderer did not also comply with the experience requirement as provided for in the Tender Document.

The Authority finds it bizarre that the Respondent would turn a blind eye in the obvious flaw on the successful tenderer's bid and find such a flaw in the Appellant's bid. The Authority sees this as clear case of double standards and favouritism.

The Authority finds the Respondent to have erred in law for contravening Regulation 90(4) of GN No. 97/2005 which provides as follows;

Reg.90(4) **“The tender evaluation shall be consistent with the terms and conditions set forth in the tender documents and such evaluation shall be carried out using the criteria explicitly stated in the tender documents”** (Emphasis added).

The above quoted provisions entails that the evaluation of tenders was to be conducted in accordance with the terms and conditions set forth in the Tender Document; however, the same was not complied with by the Respondent.

Furthermore, the Respondent’s act of awarding the tender to a tenderer who did not comply with the requirements of the Tender Document contravened Regulation 90 (7) (15) and (16) of GN No. 97/2005 which provide as follows;

Reg.90(7) **“A substantially responsive tender is the one which conforms to all the terms, conditions and specifications of the tender document(s) without material deviation or reservations”**. (Emphasis supplied)

Reg.90(15) **“The procuring entity’s determination of a tender responsiveness shall be based on the contents of the tender itself without recourse to the extrinsic evidence”**. (Emphasis added)

Reg.90(16) **“If a tenderer is not responsive to the tender document, it shall be rejected by the procuring entity** and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation” (Emphasis supplied)

Based on the quoted provisions the Authority observes that, the evaluation of tenders was to be conducted based on the bids submitted. Hence, the Evaluator’s act of seeking proof of previous performance from the Respondent in relation to some of the tenderers including the successful tenderer was contrary to Regulation 90(15) of GN No. 97/2005.

Moreover, the Evaluator’s act of seeking proof of previous performance for only tenderers who had previously worked with the Respondent had contravened Sections 43 of the Act, which requires tender boards and procuring entities to strive to achieve equality and fairness of treatment to all parties. Seeking information on some tenderers only, to wit, those who

had previously worked with the Respondent may be discriminatory, in that, such information may be used for or against such tenderers. No information about those who had not worked with the Respondent may also work in their favour or against them. For purposes of clarity the Authority reproduces Section 43 as follows;

**S. 43 "In execution of their duties, tender boards and procuring entities shall strive to achieve the highest standards of equity, taking into account:-**

**a) Equality of opportunity to all prospective suppliers, contractors or consultants;**

**b) Fairness of treatment to all parties; and**

**c) The need to obtain the best value for money in terms of price, quality and delivery having regard to set specifications and criteria (Emphasis added).**

Furthermore, the Authority considered the Respondent's argument that, the Appellant's tender ought to have been

disqualified for failure to attach a Tax Clearance Certificate from Tanzania Revenue Authority related to Revenue collection as provided for under Clause 2(vi) of the Tender Document. The Respondent contended further that, Tax Clearance Certificate attached by the Appellant was in relation to “Electrical Meter Reading” and not collection of revenue.

In order to ascertain the validity of the Respondent’s contention the Authority revisited the Appellant’s tender and noted that the Tax Clearance Certificate attached was in relation to Meter Reading. That, means they had failed to comply with Clause 2(vi) of the Tender Document. However, the Authority noted that the Evaluation Report had indicated the Appellant to have complied with the said criterion.

The Authority noted further that, the argument that the Appellant’s tender did not meet the requirement of Tax Clearance Certificate was only raised by the Respondent at the time of hearing this Appeal as said anomaly was neither noted by the Evaluators, Procurement Management Unit nor the Tender Board in their deliberations. The Authority again failed to comprehend why the Respondent was not able to identify such an obvious anomaly in the Appellant’s tender.

Moreover, the Authority noted that the Tax Clearance Certificate attached to the tender of the successful tenderer was not dated; hence it was difficult to prove its authenticity.

In addition to the above pointed shortfalls of the evaluation process, the Authority noted further that, the Bid Declaration Forms were signed on 6<sup>th</sup> of June, 2013 while the evaluation process took place from 22<sup>nd</sup> May, 2013 to 3<sup>rd</sup> June, 2013. That means, the Bid Declaration Forms were signed after evaluation was completed while they ought to have be signed before the evaluation was commenced pursuant to Section 37(6) of the Act.

From the above pointed anomalies the Authority observes that, evaluation process was marred by irregularities as it was neither fair nor transparent. Consequently, the award of the tender to the successful tenderer was also in contravention with the law.

Accordingly the Authority's conclusion in respect of sub issue two is that, the evaluation process was not conducted in accordance with the law.

**Sub issue (iii) whether communication of tender results to the Appellant was done in accordance with the law**

In resolving this sub issue the Authority considered the Appellant's argument that, the letter which notified them of the tender results did not comply with the law as it did not mention the name of the successful tenderer, the awarded tender price as well as procedure to be followed by an aggrieved tenderer.

In order to ascertain the validity of the Appellant's complaint, the Authority revisited Regulation 97(11) of GN No. 97/2005 and noted that, it expressly requires unsuccessful tenderers to be informed about the tender results immediately after an award of tender has been made. Such notification must include the name of the successful tenderer and the awarded contract price. For purposes of clarity the Authority reproduces Regulation 97(11) as hereunder;

Reg.97(11) "Upon **entry into force of the procurement or disposal contract** and, if required, the provision by the supplier, service provider, contractor or asset buyer of the security for the performance of the contract, **notice of the procurement or disposal contract shall be given to other supplier, service provider, contractor or**

**assets buyer, specifying the name and address of the supplier, service provider, contractor or asset buyer that has entered into the contract and the contract price".** (Emphasis added)

Based on the above quoted provision, the Authority agrees with the Appellant that the Respondent's letter which notified them about the tender results ought to have mentioned the name of the successful tenderer and the awarded contract price. Therefore, the Respondent's act of informing the Appellant that their tender was unsuccessful without mentioning the name of the successful tenderer and the awarded contract price contravened Regulation 97(11) of GN. No. 97/2005.

The Authority rejects the Appellant's argument that, the Respondent ought to have included the procedure that would have to be followed by the tenderers who may be dissatisfied with the tender results, since that is not the responsibility of the Respondent under the law. The Respondent is only required to inform the tenderers about the tender results and the said notification should include name and the awarded contract price. Furthermore, the Respondent is duty bound to inform the tenderer the reasons for their disqualification upon being requested.

Therefore, the Authority concludes that, the tender results were not properly communicated to the Appellant; however, that anomaly did not prejudice them.

Based on the Authority's findings on sub issue two, the Authority's conclusion with respect to issue number one is that the tender process was not conducted in accordance with the law.

## **2.0 Whether the Appellant was unfairly disqualified;**

In resolving this issue the Authority took cognizance of its findings made on sub issue two, that the Appellant was fairly disqualified for failure to comply with the requisite experience as required in the Tender Document. The Authority's conclusion therefore is that, the Appellant was fairly disqualified.

## **3.0 Whether the award of tender to the successful tenderer was proper at law;**

In resolving this issue the Authority relied on its findings in issue number one, sub issue two that, the award of tender to M/s Mabuma Investment Company Ltd was not proper in the

eyes of the law as the award was a nullity since they ought to have been disqualified for failure to comply with the experience requirement as required in the Tender Document. Therefore, the Authority concludes that, the award of tender to the successful tenderer was not proper in the eyes of the law since their tender ought to have been disqualified for being substantially non responsive.

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

Having resolved the contentious issues, the Authority revisited the Appellant's prayers as hereunder:

- With regard to the prayer for nullification of the award and that the same be awarded to the Appellant, the Authority observes that, there is nothing before this Authority to be nullified as the procurement process was flawed. However, since the Respondent awarded the contract to the successful tenderer, the Authority hereby declares that the award to them was null and void. Furthermore, the Authority cannot order that the award be made to the Appellant as that prayer is outside its powers.
- With regard to the prayer for compensation of Tshs. 12,250,000/- the Authority is of the firm view that, the

Appellant deserves some compensation to the tune of Tshs. **506,000/=** as per the following breakdown:-

- i. Appeal filing fees Tshs.120,000/=**
  - ii. Transport costs from Tanga to Dar es salaam Tshs 18,000x2= 36,000/=**
  - iii. Living costs in Dar es salaam 50,000/= x 7days = 350,000/=**
- Total Tshs. 506,000/=**

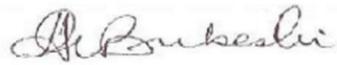
The Authority also considered the Respondent's prayer that, the Appeal be dismissed with costs. The Authority does not agree with the Respondent as the submissions made by the Appellant have some merit.

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

- re-start the tender process afresh in observance of the law; and**
- to compensate the Appellant the sum of Tshs. 506,000/= only**

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

Decision delivered in the presence of the Appellant and the Respondent this 6<sup>th</sup> August, 2013.



.....  
JUDGE (rtd) A. BUBESHI

**CHAIRPERSON**

**MEMBERS:**

1. MR. H.S. MADOFFE  .....
2. MR. F.T. MARMO  .....
3. MRS. N.S. INYANGETE  .....