

**IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY
AT DAR ES SALAAM
CONSOLIDATED APPEALS No. 30, 31 AND 32 OF 2016-17**

BETWEEN

M/S FUTURE CENTURY LTDAPPELLANT

AND

RURAL ENERGY AGENCYRESPONDENT

DECISION

CORAM

- | | | | |
|----|---------------------------------|---|-----------|
| 1. | Hon. Vincent K.D Lymo, J. (rtd) | - | Chairman |
| 2. | Mrs. Rosemary Lulabuka | - | Member |
| 3. | Ms. Monica P. Otaru | - | Member |
| 4. | Mr. Ole-Mbille Kissioki | - | Secretary |

SECRETARIAT

- | | | | |
|----|---------------------|---|----------------------|
| 1. | Ms. Florida Mapunda | - | Senior Legal Officer |
| 2. | Ms. Violet Limilabo | - | Legal Officer |
| 3. | Mr. Hamis Tika | - | Legal Officer |

FOR THE APPELLANT

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|-----|----------------------------|---|-------------------|
| 1. | Mr. Albert Albano Muhanika | - | Managing Director |
| 2. | Ms. Helen Masanja | - | Director |
| 3. | Mr. Francis Kugesha | - | Advocate |
| 4. | Mr. Jamhuri Johnson | - | Advocate |
| 5. | Mr. Matare Nyerere | - | Marketing |
| 6. | Mr. Said Kaswella | - | Procurement |
| 7. | Mr. Davis E. Lyimo | - | Manager |
| 8. | Mr. Atumpelege Mwakyembe | - | Procurement |
| 9. | Mr. Ramadhani Ngaeda | - | Engineer |
| 10. | Mr. Francis Kugesha | - | Advocate |

FOR THE RESPONDENT

- | | | | |
|----|--------------------------|---|------------------|
| 1. | Eng. Gissima Nyamo-hanga | - | Director General |
| 2. | Eng. Bengiel Msofe | - | DTS |
| 3. | Mr. George Nchwali | - | DFA |
| 4. | Mr. Prosper Msellem | - | DPPR |
| 5. | Mr. Musa Muze | - | LAM |
| 6. | Eng. Jones Olotu | - | PRM |

- | | | |
|-----------------------------|---|---------------------------------------|
| 7. Ms. Willa Haonga | - | Legal Officer |
| 8. Eng. Deusdedit Malulu | - | Project Engineer |
| 9. Ms. Theresia Nsanzugwako | - | HPMU |
| 10. Eng. Advera Mwijage | - | Ag. Marketing and Development Manager |

This Decision was set for delivery today, 12th May 2017 and we proceed to deliver it.

The three Appeals herein above were lodged by M/s Future Century Ltd (hereinafter referred to as “**the Appellant**”) against the Rural Energy Agency, commonly known by its acronym REA (hereinafter referred to as “**the Respondent**”). The Appeals are in respect to three Tenders; namely, Tender No 9 - No.AE/008/2016-17/HQ/G/9 which comprised of nine (9) Lots, Tender No. 10 - AE/008/2016-17/HQ/G/10 comprising eleven (11) Lots and Tender No. 11 – No. AE/008/2016-17/HQ/G/11 comprising nine (9) Lots all for *Supply and Installation of Medium and Low Voltage Lines, Distribution of Transformers and Connection of Customers in Un-electrified Rural Area of Mainland Tanzania* (hereinafter referred to as “**the Tenders**”).

After going through the records submitted by the respective parties to the Public Procurement Appeals Authority (hereinafter referred to as “**the Appeals Authority**”), the facts of the Appeal can be summarized as follows:-

The Respondent by his letter dated 17th January 2017 invited seventy one (71) pre-qualified tenderers to participate in the above named Tenders. The deadline for submission of bids was 22nd February 2017 whereby forty three (43) firms, the Appellant inclusive submitted their bids. The Appellant had quoted for all lots in each of the above quoted Tenders.

The bids were subjected to Evaluation which was conducted in two stages namely Preliminary and Detailed Evaluation. Upon completion of the Preliminary Evaluation, the Appellant's Tenders were found to be non-responsive in Lots 2, 4, 6, 7 and 8 for Tender No. 9; Lots 1, 2, 4, 5, 6 and 10 for Tender No. 10 and Lot 9 for Tender No. 11. The Evaluation Committee recommended award of contracts to eight different firms in relation to Tender No. 9, and to seven different firms in relation to Tenders No. 10 and 11 respectively. The Respondent's Tender Board on 23rd March 2017 through a circular resolution approved the said recommendations.

On 23rd March 2017, the Respondent issued the relevant Notice of Intention to Award the contracts to all bidders who had participated in the Tenders. Dissatisfied, on 28th March 2017 the Appellant applied for administrative review, challenging not only its disqualification from the Tenders but also the awards proposed to the successful tenderers. On 29th March 2017 the Respondent issued its written decision dismissing the Appellant's Application for lack of merits. Consequently, the Appellant on 6th April 2017 lodged these Appeals.

SUBMISSIONS BY THE APPELLANT

The Appellant's grounds of Appeal may be summarized as follows;

1. In respect of Tender No. 9 - Lots 1, 3, 5 and 7, the Appellant argues that the Respondent erred in law for intending to award the contracts to unqualified tenderers as per requirements of the Contractors Registration Board (CRB). In respect to Tender No. 10 Lots 1, 8 and 9; and Tender No. 11 Lots 1, 2, 4 and 8, the Appellant challenges the award to tenderers who are not registered with CRB as class one Contractors, contrary to the requirements of the Tender

Document. The Appellant thus argued that the contractors who are being proposed to be awarded the contracts in the above named lots are registered in lower classes, thus prevented from awards of contracts with values more than TZS two billion.

2. That the Respondent erred in law for disqualifying the Appellant's tenders on assertions of failure to attach Price Schedules in Lots 2, 4, 6, 7 and 8 for Tender No. 9; Lots 1, 2, 4, 5, 6 and 10 for Tender No. 10 and Lot 9 for Tender No. 11. The Appellant contended that they had submitted Price Schedules as part of their bid in hard and soft copies with respect to all Lots and if they were missing, they must have been tampered with.

The Appellant further contended that the Respondent has contradicted himself on the specific reasons that led to their disqualification. The Appellant argued that while in the Notice of Intention to Award the Respondent indicated that the Appellant was disqualified for failure to submit Price Schedules; in the administrative review decision the reason for disqualification indicated is failure to submit the Bid Forms. The Respondent has not been very specific in respect to the reasons for disqualification.

3. That, the Respondent changed the scope of work during the tendering process through Clarification No. 4 dated 14th February 2017. The Appellant asserted that the Respondent introduced changes which affected the Price Schedules of bidders as quantities and volume of work was changed. The Appellant argued that the Respondent failed to issue the amended Price Schedules which would incorporate the new changes. Thus, bidders were not aware on how

their bids were assessed during evaluation. The Appellant further contended that there were doubts if all bidders were equally treated during the evaluation.

Addressing the issue of the correction of errors made in their bid in respect to Tender No. 10 Lot 3, the Appellant submitted that although they had accepted the corrected prices, they expected the Respondent to maintain the unit price, as Price Schedules were not amended. The Appellant contended that the corrected prices did not specify to the bidders what quantities were affected. Hence, they doubt if the quantity changes were applied equally to all bidders. The Appellant insisted that their Price Schedules were in accordance with the requirements of the Tender Document.

4. That the Respondent erred in law by his assertion that the Appellant had failed to provide price for the underground cable in relation to Tender No. 9 Lot 9. The Appellant contended that the price for underground cable was provided under item A003 in the Schedule of Prices. They further submitted that the corrected prices for the above named Lot did not reflect an addition of missing prices. The corrected price was slightly lower than the read out prices; proving that the difference was mainly due to arithmetic errors and not an addition of the unquoted underground cables whose price was more than TZS 3.7 billion.
5. That, the Tender Document clearly stipulated that bidders were required to quote all prices VAT inclusive. Some of the tenderers failed to comply with such a requirement, however, during evaluation the Respondent evaluated all the tenders VAT exclusive.

The Appellant contended that the Respondent's act had been to the disadvantage of those who complied with tender requirements. The Respondent was required to evaluate the tenders as per the criteria provided in the Tender Document and not otherwise.

6. That, the Respondent had erred in law for intending to award Tender No.9 Lot 8 to a tenderer whose price is too high compared to others in the same Lot. Expounding on this point the Appellant submitted that, the contract price which is proposed for award was neither read out at the Tender opening nor corrected during correction of errors. The Minutes of Contract Negotiations dated 17th March 2017 indicate that the prices for the new items were added during negotiations and that the proposed bidder emerged to be more expensive than other bidders in the same Lot. The Respondent ought to have done price comparison after negotiations; however, the same was not conducted.
7. That, the Respondent erred in law for intending to award Tender No.11 Lot 9 to a tenderer whose price has drastically dropped for about two thirds from the read out price. Arguing on this point the Appellant contended that, the read out price for the proposed bidder in the said Lot was almost TZS 48 Billion and the proposed award price is TZS 11 Billion. The Appellant doubts the validity of the changes made on the awarded price.
8. That, the Respondent had contravened the law for failure to issue his decision in relation to the Appellant's application for administrative review which challenged the Notice of Intention to Award in relation to Tenders No. 9 and 11.

Finally, the Appellant prayed for the following Orders:-

- a) Nullification of the awards to the proposed bidders;
- b) The Appellant be given reasons for not being considered for award with respect to Tender No. 9, Lots 1, 3, 5, 9 and Tender No.10 Lots 3, 8, 9 and 11 and Tender No. 11 Lots 1, 2, 3, 4, 5, 6, 7 and 8;
- c) The Respondent to provide Price Schedules that were used for evaluation due to change of scope and prove that the same were used to all bidders;
- d) The Respondent should allow the Appeals Authority to review the bids by the Appellant so as to verify the missing documents; and
- e) The Appellant be awarded contracts for Lots deemed qualified.

REPLIES BY THE RESPONDENT

The Respondent's replies were preceded with a Preliminary Objection (P.O) to wit;

The Appeal is bad in law for including in the statement of Appeal ground which was not raised in the Appellant's complaints submitted to the Respondent for administrative review.

In the alternative, the Respondent's submissions on the grounds of Appeal may be summarized as follows;

That the Appellant was fairly disqualified from the Tender process as they did not submit price schedules for Lots 2, 4, 6, 7 and 8 for Tender No.9; Lots 1, 2 ,4, 5, 6 and 10 for Tender No.10, Lot 9 for Tender No. 11. The Respondent submitted further that according to the Tender Document bidders were required to submit one original and two copies of their bids. The three bids submitted by the Appellant lacked Price Schedules in some

of the Lots. Hence, the Appellant's bids in the said Lots were disqualified. The Respondent disputes the Appellant's argument that the missing Price Schedules were included in the soft copies submitted, on the ground that the soft copies were not the basis of evaluation. The Respondent had requested for the soft copies for workings only but the compliance was being checked based on the original bid submitted in the form of hard copy.

With regard to the point of failure to issue reasons for the Appellant's disqualification with regard to Lots 1, 3, 5 and 9 Tender No. 9; Lots 3, 7, 8, 9 and 11 Tender No.10 and Lots 1, 2, 3, 4, 5, 6, 7 and 8 Tender No. 11, the Respondent conceded to the said omission. The Respondent submitted further that the Appellant was disqualified in the said Lots because their quoted prices were higher than the prices quoted by the lowest evaluated bidders.

Regarding the change of scope, the Respondent submitted that, it is true that on 14th February 2017 through Clarification No. 4 the scope of work was changed. The said changes were necessitated by the fact that the Respondent was facing financial constraints; hence they decided to reduce the scope of work for Tanga Region. The original Tender Document had indicated that 359 villages were to be electrified, but due to shortage of funds the Respondent reduced the number of villages to 150 and the said changes were communicated to the Appellant vide Clarification No.4. The Respondent contended further that the changes of the scope of work did not affect the Price Schedules as only quantities were changed and other specifications remained the same.

The Respondent submitted further that, the evaluation process was conducted in accordance with laid down procedures. During that process some of the Appellant's Price Schedules contained some errors and the

same were corrected pursuant to Clause 31 of the Instruction to Bidders (ITB) and Clarification No. 4. After the process of correction of errors was completed, the corrections were communicated to the Appellant and they confirmed the changes so made.

With regard to award proposed to Tender No.9 Lot 8 for Rukwa Region the Respondent submitted that, the proposed bidder was the only successful tenderer who was assessed to the last stage of evaluation. His price was lowest among all; hence he was ranked 1st and being subjected to negotiations. During negotiations his price was increased after taking into consideration changes introduced in the scope of work.

Regarding VAT the Respondent submitted that all tenders were evaluated VAT exclusive, then after completion of evaluation, VAT was loaded as it is the responsibility of the contractor. Hence, none of the bidders were affected by the Respondent's process in this regard.

Finally, the Respondent prayed for the following reliefs;

- a) The Appellant's prayers in relation to nullification of the awards in all Lots be disregarded; and
- b) The Appeal be dismissed with costs in its entirety

ANALYSIS BY THE APPEALS AUTHORITY

In resolving the various issues raised by the parties the Appeals Authority observed that the Respondent had raised a P.O to the effect that the statements of Appeal are inclusive of a new ground that was not submitted to the Respondent during the administrative review proceedings. The said ground was framed thus: "the Respondent intends to award the Tenders to

bidders who are not registered as class one Electrical Works Contractors with CRB as required by the Tender Document".

According to Section 88(4) of the Public Procurement Act Cap 410 of 2011 (hereinafter referred to as "**the Act**") the Appeals Authority is mandated to determine appeals arising from the decisions of Accounting Officers or fresh complaints which cannot be submitted to the accounting officer due to entry into force of a procurement contract. Since the Appeals at hand arose from the decision of the Respondent (Accounting Officer) and the intended contracts have not been executed, the grounds of Appeal should be the same as those submitted for administrative review.

The Appeals Authority informed the Appellant that since the P.O raised is a clear position of the law and as supported by various decided cases by the Appeals Authority; the Appellant could not be allowed to argue that ground and was required to confine themselves to the grounds which were the subject matter of the application for administrative review. The Appellants and their learned counsel were of the views that the seven days provided under the law for bidders to lodge complaints upon receipt of the Notice of Intention to award were insufficient for any prospective bidder to obtain requisite information from public offices and thereafter to effectively challenge the decision of the Respondent. They wanted to suggest that there was a possibility of failure of justice and the principle of value for money compromised, arguing that in this Appeal, they had intended to obtain information from CRB in respect to the registration status of some of the contractors who had been proposed for award of the contracts.

The Appeals Authority reminded the Appellant that from the records, they were all present at the Bid Opening Ceremony and they knew the various

bidders. If they wanted clarification, they had the opportunity to require the Respondent to clarify a matter which they did not do. Secondly, it is on record that the Appellant embarked on collecting information on the Registration status of the proposed bidders soon after they had been served with the Respondent's decision on the administrative review.

The Appeals Authority revisited the documents submitted before it and observed that the Respondent's Notice of Intention to Award issued on 23rd March 2017 and the same was received by the Appellant via email on 25th March 2017. The Appellant lodged the application for administrative review on 28th March 2017 to which the Respondent replied in his written decision dated 29th March 2017 after which the Appellant wrote to CRB on 3rd April 2017 requesting to be availed with registration status of bidders who were proposed for award of tenders. CRB replied to the Appellant's request on 4th April 2017. From the sequence of events the Appeals Authority observes that there was inordinate delay by the Appellant to raise the issue of registration and that cannot be the basis of overriding the explicit provisions of the law. Their failure is attributable to lack of understanding of the law more than anything else. The Appellant had the right and the opportunity to raise that issue during administrative review proceedings but he decided to sleep on that right.

According to Regulation 231(9) of the Public Procurement Regulations, GN. No. 446 of 2013 (hereinafter referred to as "**G.N. No. 446 of 2013**") a bidder who is duly served with the Notice of Intention to Award and failed to submit all of his complaints to the Accounting Officer he would be deemed to have waived his right. Therefore, the PO was upheld and the Appellant was precluded from addressing the Appeals Authority on that new ground.

Having determined the PO, the Appeals Authority proceeded to frame the issues for determination as raised by the parties. The Appeals Authority is of the view that the Appeal has three main issues calling for determination; and these are:-

- **Whether the disqualification of the Appellant was proper in law;**
- **Whether the awards of contracts to the proposed successful tenderers are justified**
- **What reliefs, if any, are the parties entitled to.**

Having identified the issues, we proceed to determine them as hereunder:-

1.0 Whether the disqualification of the Appellant was proper in law

In resolving this issue the Appeals Authority considered the Appellant's arguments that they had been unfairly disqualified from the tender process for failure to submit Price Schedules and Forms of Tenders while the same were attached to their bids. The Appeals Authority revisited the bids submitted by the Appellant in all three tenders and observed as follows:

- i) The Appellant had submitted the Forms of Tenders with respect to all Lots. However he did not include the respective Price Schedules in Tender No. 9 for Lots No. 2, 4, 6, 7 and 8; and no Price Schedules for Lots No. 1, 2, 4, 5, 6 and 10 in respect to Tender No. 10. Regarding Tender No. 11, it was noted that the Appellant had attached the respective Price Schedules for all lots contrary to the Respondent's Evaluation Report.

- ii) The Appellant conceded not to have included Price Schedules for all Lots shown as missing save for Lot No. 9 of Tender No. 11 as correctly observed by the Appeals Authority. The Appellant conceded further that, they were certain that their bid documents had not been tampered with.

As a result, it is clear that the Appellant had failed to comply with a mandatory requirement of Clause 16.3 of the ITB which required bidders to provide breakdown of prices in the manner provided for in the Price Schedules.

Reverting to disputed Lot No.9 of Tender No.11, the Appeals Authority assessed the Appellant's price on this Lot so as to ascertain if they were eligible for award of contract. According to the Price Schedule, the Appellant's prices were USD 2,973,275.41 and TZS 11,544,495,533.04 for foreign and local components respectively. Converting the foreign component into local currency at the exchange rate of TZS 2237.32 used in the evaluation process is equivalent to TZS 6,652,168,540.30, totaling the price to TZS 18,196,664,073.34. Assuming that there were no corrections of errors, the Appeals Authority observed that the Appellant's price when compared with other bidders in the same Lot would have been ranked the 7th. It should be noted that the proposed award price for this Lot was TZS 12,285,352,983.55. Based on the assessment above the Appeals Authority is of the settled view that, even if the Appellant's bid in this Lot could have been evaluated up to the price comparison stage, they were not eligible for the award of the contract since their price was higher than that of the proposed successful bidder and five others.

The Appeals Authority considered the Appellant's other contention that they were not given reasons for being unsuccessful with respect to Lots

with Price Schedules for the Tenders. The Appeals Authority reviewed the Notice of Intention to Award and observed that it lacked reasons for disqualification of the Appellant in the named Lots. During the hearing, the Respondent conceded that that was an omission on their side and indicated that the Appellant was not considered for award in the said Lots because their prices were higher than those of the proposed bidders. In substantiating the same, the Appeals Authority reviewed the Evaluation Report and observed that the Appellant's bids with respect to Tender No. 9, Lots 1, 3, 5, 9 and Tender No.10 Lots 3, 8, 9 and 11 and Tender No. 11 Lots 1, 2, 3, 4, 5, 6, 7 and 8 were evaluated up to the price comparison stage. During price comparison the Appellant's bids were ranked as follows:-

- a) Under Tender No.9 Lot No.1 the Appellant was ranked 12th, Lot No.3 ranked 6th, Lot No. 5 ranked 9th and Lot No. 9 ranked 3rd;
- b) Tender No.10 Lot No.3 he was ranked 10th, Lot No. 7 ranked 13th, Lot No. 8 ranked 8th, Lot No. 9 ranked 9th and Lot No. 11 ranked 7th;
- c) Tender No. 11 Lot No.1 he was ranked 7th, Lot No 2 ranked 7th, Lot No. 3 ranked 4th, Lot No. 4 ranked 4th, Lot No. 5 ranked 7th, Lot No. 6 ranked 5th, Lot No 7 ranked 5th and Lot No. 8 ranked 6th.

Based on the above ranking it is crystal clear that the Appellant's bids had higher prices and could not have been recommended for award.

With regard to change of scope, the Appeals Authority revisited the parties' arguments and documents submitted and observed that indeed the Respondent changed the scope through Clarification No. 4. The said changes were allegedly caused by financial constraints facing the Respondent. The Appellant having received the said Clarification and

noting that the Price Schedules were not amended, he proceeded to prepare his bids and submitted them without seeking clarification as allowed by Clause 7 of the Bid Data Sheet (BDS) and Regulation 13 of GN No. 446 of 2013. It is the view of the Appeals Authority that the Appellant's act of submitting their bids without seeking clarification indicates that they were ready to comply with requirements of the Tenders as issued. The Appeals Authority finds the Appellant to have forfeited his own right by failure to inquire for clarification if they noted during preparation of their bids that the change of scope had impacts on Price Schedules. The Appeals Authority rejects the Appellant's argument that he could not have sought for clarification as the time was not sufficient to do so as it was below 14 days as specified in the Bid Data Sheet. Counting from 14th February 2017 when clarifications were issued to 22nd February 2017 when the tenders were opened, it is obvious that the clarification itself was issued eight days prior to the tender opening. Regulation 13(1) of GN No.446 of 2013 allows bidders to seek for clarification seven days prior to the tender opening. Thus, the Appellant immediately after receiving Clarification No.4 could have raised his concern by informing the Respondent the need of having amended Price Schedules.

Furthermore, on 8th March 2017 the Appellant received a letter from the Respondent requiring him to confirm correction of errors with respect to Tenders No. 9 and 10. On 9th March 2017 the Appellant accepted the corrections made. In these Appeals the Appellant challenges the corrections made with respect to Tender No. 9 Lot 9 regarding unquoted price for underground cables and missing prices for double circuit assemblies for Tender No. 10 Lot 3. The Appeals Authority observes that, the Appellant was aware of the corrections made and he accepted them. If he was not satisfied he ought to have rejected them and challenged the

evaluation process. According to Clause 31.2 of the ITB if a bidder accepted the corrected price the same shall be considered as binding upon him. That is to say, the Appellant is precluded from challenging the validity of the corrections made on his bid while he accepted the same.

The Appeals Authority considered the Appellant's contentions with regard to VAT. In order to ascertain the validity of the Appellant's argument on this point the Appeals Authority reviewed the Evaluation Report and observed that during evaluation VAT was excluded from all bids. Based on that fact the Appeals Authority is of the view that much as the Tender Document required bidders to quote prices VAT inclusive, the Respondent's act of evaluating all the tenders VAT exclusive did not prejudice any bidder. Consequently, the Appeals Authority rejects the Appellant's contention on this ground.

Therefore, from the above analysis the Appeals Authority's conclusion with respect to issue one is in the affirmative, that the Appellant's disqualification was proper in law.

2.0 Whether the awards of contracts to the proposed successful tenderers are justified

The Appellant challenged the proposed awards with respect to Tender No. 9 Lot 8 and Tender No. 11 Lot 9. In order to substantiate if the proposed award was proper the Appeals Authority revisited the documents submitted before it and observed that the lowest evaluated tenderer who was proposed for award of Tender No.9 Lot 8 is M/s Nakuroi Investment Ltd whose proposed contract price is TZS 23,603,934,654.90 and USD 5,556,784.54 for foreign and local components respectively. It was noted

further that the read out price for the said bidder was TZS 27,923,729,730.49 and USD 4,209,688.29. Furthermore, the Evaluation Report indicates that M/s Nakuroi Investment Ltd was the only bidder whose bid was found responsive up to Financial Evaluation whereby his quoted price was found with arithmetical errors and the same were corrected. From the above, the Appeals Authority observed that, the awarded price in Tanzanian shillings has been reduced from the read out price while the awarded price in USD has been increased from the read out price. It is the considered views of the Appeals Authority that much as the law allows negotiations to the benefit of the government the changes have been caused by corrections and negotiations as correctly submitted by the Respondent.

Furthermore, the Appeals Authority considered the Appellant's argument regarding the drastic change of the quoted price and proposed contract sum for Tender No. 11 Lot 9. The Appeals Authority reviewed the documents submitted and observed that during financial evaluation more than two thirds of the read out prices for all bidders were reduced. During the hearing the Respondent clarified that the reduction was due to change in scope whereby for Tanga Region (Tender No.11 Lot 9) 359 villages were to be electrified, but due to financial constraints the Respondent reduced the number of villages to 150. Hence the quantity of materials was reduced with a corresponding drop in cost prices.

The Appeals Authority reviewed Clarification No. 4 and observed that it is true that there were changes on the number of villages to be electrified. Further to that, the Evaluation Report shows that the price was reduced equally to all bidders who reached the Financial Evaluation stage. Based on

the above facts the Appeals Authority is of the settled view that the proposed contract sum for Tender No.11 Lot 9 was proper.

The Appeals Authority considered the Appellant's contention that the proposed contract sum for some of the Lots were different from the ranking prices which resulted to recommendations of awards. The Appeals Authority reviewed the prices used for ranking and proposed contract sums in the Notice of Intention to award and noted that there were some discrepancies since some of the prices went up and others dropped. The Appeals Authority revisited the Minutes of Negotiations which were carried out with lowest evaluated bidders and observed that during that process some of the prices were increased due to increase in quantities and other were dropped due to reduction of quantities. Therefore the Appeals Authority was satisfied that the variations were caused by the negotiations conducted and should not be treated as foul play.

Accordingly, the Appeals Authority's conclusion with regard to the second issue is in the affirmative, that the awards of contracts to the proposed successful tenderers are justified.

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

Taking cognizance of the findings made above, the Appeals Authority finds the Appeals to have no merits as the Appellant was fairly disqualified and awards proposed to successful tenderers are justified. The Appeals Authority therefore dismisses the Appeals and orders the Respondent to proceed with the tender process.

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

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

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

This Decision is delivered in the presence of the Appellant and the Respondent this 12th May, 2017.

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VINCENT K.D. LYIMO, J. (RTD)

CHAIRMAN

MEMBERS:

1. **MRS. ROSEMARY LULABUKA**

2. **MS. MONICA OTARU**