

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 11 OF 2023-24**

**BETWEEN**

**M/S ASCERICS LIMITED.....APPELLANT**

**AND**

**ARUSHA CITY COUNCIL.....RESPONDENT**

**DECISION**

**CORAM**

- |                                     |               |
|-------------------------------------|---------------|
| 1. Hon. Justice (rtd) Sauda Mjasiri | - Chairperson |
| 2. Eng. Stephen Makigo              | - Member      |
| 3. Mr. Pius Mponzi                  | - Member      |
| 4. Mr. James Sando                  | - Secretary   |

**SECRETARIAT**

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

**FOR THE APPELLANT**

- |                         |                                  |
|-------------------------|----------------------------------|
| 1. Ms. Mary Ganga       | - In house Advocate              |
| 2. Mr. Mathayo Nungu    | - Managing Director              |
| 3. Mr. Seif Kasori      | - Procurement Management Officer |
| 4. Mr. Elimlingi Moshia | - Operation Manager              |



## FOR THE RESPONDENT

1. Mr. Deusdedith Kweka - Legal Officer
2. Mr. Godfrey Mwangaro - Head of Procurement  
Management Unit (HPMU)

This Appeal was lodged by **M/S Ascerics Limited** (hereinafter referred to as "**the Appellant**") against the **Arusha City Council** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of Tender No. LGA/003/2023-2024/NC/01 for Parking Fee Collection and Fine for Wrong Parking along Road Reserve Areas in Arusha City Council ("Wakala wa Ada ya Ushuru ya Maegesho ya Vyombo vya Usafiri na Faini Kwenye Maeneo yasiyo Sahihi Kwenye Hifadhi za Barabara Katika Jiji la Arusha") (hereinafter referred to as "**the Tender**").

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

The Tender was conducted through National Competitive Tendering Method as specified in the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to as "**the Act**") and the Public Procurement Regulations, GN. No. 446 of 2013 as amended (hereinafter referred to as "**the Regulations**").




On 25<sup>th</sup> May 2023, the Respondent through the Tanzania National electronic Procurement System (TANePS) invited tenderers to participate in the Tender. The deadline for submission of tenders was on 7<sup>th</sup> June 2023.



On the deadline, the Respondent received ten tenders including that of the Appellant.

The received tenders were subjected to evaluation. After completion of evaluation, the Evaluation Committee recommended award of the Tender to M/S Ngare Company Ltd. The recommended contract price was Tanzania Shillings Two Hundred Ninety Million Two Hundred Ninety Five Thousand Two Hundred only (TZS 290,295,200.00) VAT Inclusive per month. This monthly contract price was equivalent to Three Billion Four Hundred Eighty Three Million Five Hundred Forty Two Thousand Four Hundred only (3,483,542,400.00) VAT inclusive per annum. The Tender Board approved the Evaluation Committee's recommendations at its meeting held on 26<sup>th</sup> June 2023.

On 19<sup>th</sup> July 2023, the Respondent issued the Notice of Intention to award which informed tenderers that it intends to award the Tender to M/S Ngare Company Ltd. Furthermore, the Notice stated that the proposed award contract price per month was Tanzanian Shillings Two Hundred Ninety Million Two Hundred Ninety Five Thousand Two Hundred only (TZS 290,295,200.00) VAT Inclusive. In addition, the Notice informed the Appellant that its tender was disqualified for failure to attach a table that indicated the names of key staff and their experience in parking revenue collection. The Appellant did not attach Curriculum Vitae (CVs) of key staff and their academic certificates. The Appellant claimed to have received the said Notice through TANePS on 25<sup>th</sup> July 2023.

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Dissatisfied with the reasons given for its disqualification, the Appellant claimed to have applied for administrative review to the Respondent through a letter dated 31<sup>st</sup> July 2023. The letter was submitted to the Respondent on 1<sup>st</sup> August 2023. According to the Appellant, the Respondent did not issue its decision as required. Therefore, the Appellant filed this Appeal on 22<sup>nd</sup> August 2023.

When the matter was called on for hearing, the following issues were framed, namely: -

**1.0 Whether the disqualification of the Appellant was justified;  
and**

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

Prior to making submissions on the merits of the Appeal, the Respondent raised a Preliminary Objection (PO) on a point of law. The Respondent stated that the Appeal is not properly before the Appeals Authority as the Appellant failed to exhaust the available review procedures. In view of the raised PO and the limited time in determination of appeals, the Appeals Authority informed the parties that it would hear both the PO and the merits of the Appeal. Therefore, parties were required to address the Appeals Authority on the PO prior to submitting on merits.

#### **SUBMISSIONS BY THE RESPONDENT ON THE PO**

The Respondent's submissions on the PO were made by Mr. Deusdedith Kweka, Legal Officer from the Respondent's Office. He commenced his submissions by stating that the raised PO is based on Sections 95 and 96 of the Act read together with Regulations 104 and 105 of the Regulations.



Sections 95 and 96 of the Act require a tenderer who is dissatisfied with the procuring entity's decision to apply for administrative review to the accounting officer of the respective procuring entity within seven working days of becoming aware of the circumstances giving rise to a complaint.

The record of Appeal indicates that the Notice of Intention to award was communicated to tenderers on 25<sup>th</sup> July 2023. The notice contained reasons for disqualification of all unsuccessful tenderers including the Appellant. Upon being dissatisfied with the reasons for its disqualification, the Appellant ought to have applied for administrative review to the Respondent within seven working days of becoming aware of the circumstances giving rise to a dispute. However, the Appellant filed its Appeal directly to this Appeals Authority, the legal officer contended. The Respondent denied to have received the Appellant's application for administrative review. Thus, the Appellant contravened Sections 95 and 96 of the Act.

In support of his argument, the legal officer cited the case of **M/S Aqua Power Tanzania Ltd (T/S Turbine Tech) versus Public Procurement Appeals Authority and 3 others** Miscellaneous Civil Cause No. 32 of 2020, High Court of Tanzania (Main Registry) at Dar es Salaam (Unreported). In this case the court made reference to the case of **Freeman Aikael Mbowe versus the Director of Public Prosecutions and 2 Others**, Misc. Civil Cause No. 21 of 2021, where the court held that: -



*"This court assumes jurisdiction to hear application of this nature only after all available remedies under any other written laws have been exhausted. It therefore, provides at what time this court would exercise its jurisdiction, which is, of course after the petitioner has exhausted other available remedies such as that provided under CPA, etc."*

The court also made reference to the case of **Mirambo Ltd versus Commissioner General, Tanzania Revenue Authority and Another**, Miscellaneous Civil Application No. 57 of 2020 where court relied on the case of **Abadiah Selehe V. Dodoma Wine Co. Ltd** [1990] TLR 113 where the court held that:-

*"...As a general rule the court will refuse to issue the order if there is another convenient and feasible remedy within the reach of the applicant"*.

The legal officer contended that the referred cases established a principle that if there is a remedy, the same should be exhausted before one files an appeal or judicial review. The Respondent related the above principle to the facts of this Appeal, and stated that it is clear that the Appellant was required to file an application for administrative review to the Respondent first before filing an appeal to the Appeals Authority. However, the Appellant failed to exhaust this available remedy. Thus, the Appellant contravened the requirement of the law.

In that regard, the Respondent prayed for dismissal of the Appeal for being improperly before the Appeals Authority.



## **REPLY BY THE APPELLANT ON THE PO**

The Appellant's submissions on the PO were made by Ms. Mary Ganga, learned Advocate. She commenced her submissions by stating that, it is not disputed that Sections 95 and 96 of the Act require a tenderer who is dissatisfied with the Tender process to submit an application for administrative review to the accounting officer of the respective procuring entity before filing an Appeal to the Appeals Authority.

The learned counsel submitted that the Appellant complied with the requirements of Sections 95 and 96 of the Act since it submitted an application for administrative review to the Respondent. She submitted that the Notice of Intention to award dated 19<sup>th</sup> July 2023 was served to the Appellant on 25<sup>th</sup> July 2023 through TANEPS. Upon receipt of the Notice of Intention to award and dissatisfied with the reasons given for its disqualification, the Appellant through a letter dated 31<sup>st</sup> July 2023 applied for administrative review to the Respondent. The said application was sent to the Respondent on 1<sup>st</sup> August 2023 through e-mail address [cd@arushacc.go.tz](mailto:cd@arushacc.go.tz). The learned counsel elaborated further that the email was delivered to the Respondent and no message was returned to prove otherwise.

The learned counsel expounded further that the Appellant's application for administrative review was also submitted physically to the Respondent's office on 1<sup>st</sup> August 2023. The application was received at the confidential registry of the Respondent whereby the responsible officer acknowledged receipt by signing the Appellant's dispatch book.



The learned counsel contended that the Appellant's application for administrative review was submitted within time. Therefore, the Respondent ought to have issued its decision within seven working days. To the contrary, the Respondent failed to do so. Thus, after a lapse of the seven working days within which the Respondent ought to have issued its decision, the Appellant filed this Appeal pursuant to Section 97(2)(a) of the Act on 22<sup>nd</sup> August 2023.

In relation to the cases relied upon by the Respondent, the learned counsel submitted that the copies of the relied decisions were not served to the Appellant. Therefore, the Appellant is not aware of its contents and would not be in a position to argue the same.

In view of the above submissions, the learned counsel prayed that the PO raised by the Respondent should be dismissed and the Appeal be heard on merits.

#### **REJOINDER BY THE RESPONDENT ON THE PO**

On his brief rejoinder, the legal officer reiterated his submissions in chief that the Appellant did not submit an application for administrative review and there is no proof that the same was served to the Respondent. The legal officer denied to have received the Appellant's application for administrative review through email or physical delivery. The Legal Officer asserted that in order to substantiate that the document was received in the Respondent's office, the received document must have a signature and the name of the person who received it. In addition, it should indicate the date and time of delivery. However, the Appellant's dispatch book did not





comply with these elements. Therefore, the Respondent insisted that the Appellant did not apply for administrative review. Thus, this Appeal is not properly before the Appeals Authority. Hence, the same should be dismissed.

### **ANALYSIS BY THE APPEALS AUTHORITY ON THE PO**

Based on the submissions by the parties, the Appeals Authority is of the view that the PO centres on the issue as to **whether the Appeal is properly before the Appeals Authority**. In resolving this issue, the Appeals Authority revisited sections 95(1) and 96(1) and (4) and 97(1) (2) (a) of the Act which read as follows:-

*"95(1) Any tenderer who claims to have suffered or that may suffer any loss or injury as a result of a breach of a duty imposed on a procuring entity by this Act may seek a review in accordance with sections 96 and 97.*

*96(1) Any complaints or dispute between procuring entities and tenderers which arise in respect of procurement proceedings, disposal of public assets by tender and awards of contracts shall be reviewed and decided upon a written decision of the accounting officer of a procuring entity and give reasons for his decision.*

*(4) The accounting officer shall not entertain a complaint or dispute unless it is submitted within seven working days from the date the tenderer submitting the complaint or*



*dispute or when that tenderer should have become aware of those circumstances, whichever is earlier”.*

97 (2) Where-

*(a) the accounting officer does not make a decision within the period specified under this Act; or*

*(b) the tenderer is not satisfied with the decision of the accounting officer,*

*the tenderer may make a complaint to the Appeals Authority within seven working days from the date of communication of the decision by the accounting officer or upon the expiry of the period within which the accounting officer ought to have made a decision”.*

(Emphasis supplied)

The above quoted provisions entail that a tenderer who is dissatisfied with the procuring entity's decision, is required to file an application for administrative review to the respective procuring entity. The filing of the application should be within seven working days of becoming aware of the circumstances giving rise to a complaint. The procuring entity is required to issue its decision within seven working days. If the procuring entity fails to issue its decision within time, a tenderer is required to file an Appeal to the Appeals Authority within seven working days.

Having related the above quoted provisions to the facts of this Appeal, the Appeals Authority observed that the Appellant received the Notice of Intention to award on 25<sup>th</sup> July 2023 through TANePS. The Appellant was



dissatisfied with the reasons for its disqualification as contained in the said notice. The record of Appeal indicates that the Appellant applied for administrative review through a letter dated 31<sup>st</sup> July 2023. The letter was submitted to the Respondent on 1<sup>st</sup> August 2023 through e-mail at 11:24 am. In addition, the same letter was physically delivered to the Respondent's office on 1<sup>st</sup> August 2023.

According to the record of Appeal, the e-mail address of [cd@arushacc.go.tz](mailto:cd@arushacc.go.tz) used by the Appellant to submit an application for administrative review is the Respondent's official email address. This email address is shown on its letter head and in the Respondent's Statement of Reply. The Respondent also confirmed the existence of the referred e-mail address. Having reviewed the Appellant's email to the Respondent, the Appeals Authority observed that it is titled 'administrative review' and has several attached documents including a formal application for administrative review. In reviewing further the referred email, it is observed that the same has been delivered to the Respondent. There is no proof that the email has not been received by the intended recipient.

The Appeals Authority reviewed Section 22(1) of the Electronic Transactions Act, Cap 442 R.E. 2022 which reads as follows:-

***"22 (1) Information in electronic form is dispatched when it enters a computer system outside the control of the originator or of the person who sent the electronic communication on behalf of the originator".***

(Emphasis supplied)



The above quoted provision entails clearly that information in an electronic form would be deemed to have been communicated when it enters the computer system outside the computer of the originator. That is to say, information would be deemed to have been communicated when it enters to the recipient's computer.

Having related the above quoted provisions to the facts of this Appeal, the Appeals Authority is satisfied that the Appellant submitted an application for administrative review through email on 1<sup>st</sup> August 2023 and the same was received by the Respondent. Consequently, the Respondent was required to issue its decision thereof as per the requirements of the law.

According to Section 96(6) of the Act, the Respondent was required to issue its decision within seven working days. Counting from 1<sup>st</sup> August 2023 when the Application for administrative review was lodged, the Respondent was required to issue its decision by 11<sup>th</sup> August 2023. However, the Respondent did not issue its decision up to the expiry of this period. Section 97(2)(a) of the Act allows a tenderer who had not received the procuring entity's decision to file an appeal to the Appeals Authority within seven working days. Counting from 11<sup>th</sup> August 2023, the seven working days for filing an Appeal to the Appeals Authority ended on 22<sup>nd</sup> August 2023. On the same date, the Appellant lodged this Appeal.

In view of the above findings, the Appeals Authority finds the Appellant's act of filing this Appeal to be proper and in accordance with Section 97(2)(a) of the Act.

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The Appeals Authority considered the cited cases by the Respondent and observed that the same are inapplicable under the circumstances. Furthermore, the Appellant exhausted the review mechanism procedures as provided under the Act. Thus, the Appellant did not lodge its Appeal directly to this Appeals Authority as alleged by the Respondent.

Therefore, the Appeals Authority overrules the raised PO by the Respondent and proceeds to determine the Appeal on merits.

### **SUBMISSIONS BY THE APPELLANT ON MERITS OF THE APPEAL**

In this Appeal, the Appellant's submissions were made by Ms. Mary Ganga, learned advocate from the Appellant's office. She commenced her submissions on the first issue by stating that the Appellant disputes the reasons given by the Respondent for its disqualification. According to the Notice of Intention to award, the Appellant was disqualified for failure to attach a table that indicated the names of key staff and their experience in parking revenue collection. In addition, it failed to attach Curriculum Vitae (CVs) of key staff and their academic certificates.

The learned counsel submitted that the Respondent's basis for disqualification of the Appellant was Item 3 of the Invitation To Tender. The referred item required tenderers to submit a list of equipment that would be used in the execution of the contract, indicate location of a tenderer's office and a list key staff with their experience. The learned counsel contended that in order for the said criteria to be used for evaluation the same has to be included in the Tender Document and not in the Invitation to Tender.



The learned counsel submitted that the criteria used to disqualify the Appellant's tender were in the Invitation to Tender and not the Tender Document. The learned counsel contended that according to Regulations 181 and 182 of the Regulations, an Invitation to Tender should not include tender requirements. Therefore, it ought not to be considered during evaluation of tenders.

The learned counsel submitted that Regulations 183 and 184 of the Regulations provide clear guidance on what has to be contained in the Tender Document. These include amongst others tender requirements and evaluation criteria. In the Tender under Appeal, the criterion relating to key staff was not provided in the Tender Document. The only key staff criterion that was provided under Item 1.12 of Section IV of the Tender Document related to slices and packages which was not relevant for this Tender. In addition, the learned counsel expounded that Clause 4.1 to 4.3 of Section IV of the Tender Document provided the criteria to be used for evaluation at the preliminary stage. There was no criterion which required tenderers to indicate names of key staff including submission of their CV.

The learned counsel submitted further that the Tender under Appeal was floated on TANePS. However, there was no slot for attaching information relating to key staff. The learned counsel asserted that if the requirement of submitting information relating to key staff was crucial, the requirement would have been stated in the Tender Document and a slot for inserting such information would have been provided in TANePS.



The learned counsel stated that the Respondent when evaluating this Tender used a criterion not provided in the Tender Document but in the Invitation to Tender. Under Regulations 183 and 184 of the Regulations it is mandatory for the evaluation criteria to be included in the Tender Document. Thus, the Respondent's act of evaluating tenders based on the criteria not included in the Tender Document contravenes Section 72(1) and (2) of the Act. This section requires evaluation of the tenders to be based on the contents of the Tender Document itself.

The learned counsel submitted further that when floating this Tender, the Respondent did not use a standard Tender Document issued by the Public Procurement Regulatory Authority (PPRA) version No. PPRA (T) STD/KISW/12/2021/MAP of 3<sup>rd</sup> December 2021. Had the Respondent used a proper standard Tender Document, all the evaluation criteria would have been provided under Section III – Tender Data Sheet of the standard Tender document. The learned counsel stated that the Respondent's failure to use a proper standard Tender Document contravened the requirements of Regulation 184(1) (a) (3) of the Regulations.

The learned counsel elaborated that, Clause 13.1 (i) (j) and 13.1(ii) (d) of Section II – Instruction To Tenderers (ITT) of the PPRA Standard Tender Document requires procuring entities to identify all criteria that would be used for evaluation. The Tender Document issued by the Respondent did not include the criteria that required tenderers to indicate names of staff and their CV.

The learned counsel contended that the Appellant's disqualification was based on the criterion that was not part of the Tender Document.



Therefore, its disqualification was unjustified. The learned counsel asserted that the Appellant complied with all the requirements of the Tender. Thus, the Appellant deserves to be awarded the Tender under Appeal.

Finally, the Appellant prayed for the following orders:-

- i. The Tender be awarded to it; and
- ii. Any other order the Appeals Authority may deem fit to grant.

### **REPLY BY THE RESPONDENT ON THE MERITS OF THE APPEAL**

The Respondent's submissions were made by Mr. Deusdedith Kweka, Legal Officer from the Respondent's Office. He commenced his submissions on the first issue by stating that the Appellant's disqualification was justified as it failed to provide a list of key staff and their CVs as required by Item 10 of Attachment A of the Tender Document.

The legal officer submitted that the requirement to provide a list of key staff and their CVs were provided under Item 3 of Section I – Invitation To Tender. Section IV – Items 4.1, 4.2 and 4.3 of the Tender Document provide guidance on the evaluation of tenders. Specifically, Item 4.1 requires criteria in the Invitation to Tender to be considered during preliminary evaluation. Thus, the requirements provided in the Invitation to Tender were considered during evaluation of tenders.

The legal officer contended further that Item 1.12 of Section IV of the Tender Document required tenderers to attach to their tender, documents indicating qualification of their staff. Therefore, the Respondent disputes





the Appellant's assertion that it was disqualified based on the criteria not provided in the Tender Document.

The Respondent stated that in the TANEPS window a slot for uploading the list of key staff and their CVs was provided. Tenderers were required to upload such information when uploading Price Schedule in accordance with Section VII of the Tender Document. In addition, tenderers were required to upload attachment A that was duly filled. During evaluation process the Appellant was found not to have submitted Attachment A which included Item 10 that required tenderers to list key staff and their CVs. Thus, its tender was disqualified for failure to do so.

In support of his argument, the legal officer cited the case of ***M/S Bhatia TR.CO.LLC and Tanzania Airports Authority and M/S Dufry AG***, Appeal Case No. 48 of 2018-19. In this case, the Appeals Authority held that the disqualification of the Appellant was justified for failure to attach important information and major supporting documents in order to substantiate its responsiveness to the tender requirements as stipulated in the Terms of Reference.

The legal officer also made reference to the case of ***M/S Aroche Systecs & Investico Ltd versus Tanzania Airports Authority***, Appeal Case No. 35 of 2021-22. In the referred case, the Appeals Authority held that the disqualification of the Appellant was justified for failure to attach anti-bribery policy/code of conduct and compliance programme.

In view of the Appeals Authority's position in the referred Appeal cases, the Respondent's legal officer urged the Appeals Authority to maintain the



same position in this Appeal since the Appellant was fairly disqualified for failure to comply with the requirements provided in the Tender Document.

The legal Officer submitted further that the issued Tender Document complied with the standard Tender Document issued by PPRA. The Tender Document contained all the criteria to be used in the evaluation process. Therefore, the Respondent did not breach the PPRA Guidelines as contended by the Appellant.

The legal officer stated further that tenders were evaluated in accordance with the criteria provided in the Tender Document. The Respondent indicated that the intention of inserting a criterion relating to qualification and experience of staff was to assess if a tenderer has the required personnel for executing the intended work. During evaluation, the Appellant's tender was found not to have complied with such a criterion. Therefore, its disqualification was in accordance with Regulation 204 (1) and (2) (b) and (k) of the Regulations.

The legal officer concluded his submissions by stating that when conducting this Tender process the Respondent complied with the requirements of Section 72 of the Act and Regulations 184 and 203 of the Regulations.

Finally, the Respondent prayed for the following orders:-

- i. Dismissal of the Appeal and confirmation of the award made to M/S Ngare Company Ltd;
- ii. The Appellant be condemned for the misuse of the legal processes.



## **ANALYSIS BY THE APPEALS AUTHORITY ON MERITS OF THE APPEAL**

### **1.0 Whether the disqualification of the Appellant was justified**

In resolving this issue, the Appeals Authority considered the contentious arguments by the parties where on one hand, the Appellant claimed to have been unfairly disqualified from the Tender process as the criterion relating to staff qualification and their experience was not provided in the Tender Document. In addition, there was no slot on TANEPS for inserting the alleged criterion that led to the Appellant's disqualification. On the other hand, the Respondent indicated that the criterion that disqualified the Appellant from the Tender process was provided under Item 3 of the Invitation to Tender, Item 1.12 and 4.1 of Section IV of the Tender Document and Attachment A. The slot for inserting the required information was also provided on TANEPS. Thus, the Appellant was fairly disqualified for failure to comply with the requirements of the Tender Document.

In ascertaining the validity of the parties' arguments, the Appeals Authority revisited Item 3 of the Invitation to Tender, Item 1.12 and 4.1 of Section IV of the Tender Document. The provisions read as follows: -

*"3. Awasilishe orodha ya vifaa vya utendaji kazi alivyonavyo, mahali ofisi ilipo (aoneshe endapo amepanga au anamiliki), **idadi ya wafanyakazi na uzoefu wao.***

*1.12 pale ambapo **mzabuni anawasilisha Zabuni kwa zaidi ya mkataba moja wa huduma uliogawanywa katika sehemu***



*ndogo ndogo (slice) au kufungashwa, lazima awasilishe uthibitisho wa kwamba anafikia au kuzidi matakwa ya kila sehemu ndogo (slice) au loti katika vigezo vifuatavyo:-*

*9. Wastani wa mapato/mauzo kwa mwaka*

*10. Uzoefu wa kazi*

*11. Uzoefu wa Kifedha, nk*

*12 **Uwezo wa wafanyakazi; na uwezo wa vitendea kazi***

*4. Taasisi Nunuzi itafanyia tathmini na kulinganisha zabuni kwa namna ifuatayo:*

*4.1 Tathmini ya awali; ili kutambua ni zabuni zipi zenye kukidhi Viwango vya nyaraka za Zabuni kama vile: zile zilizosainiwa kwa usahihi **na zilizotimiza vigezo na masharti ya Mwaliko wa Zabuni.***

Having reviewed the above quoted provisions, the Appeals Authority observed that Item 3 of the Invitation to Tender required tenderers to indicate the list of staff and their experience. Item 1.12 – Section IV of the Tender Document required tenderers who would be quoting for more than one tender or for contract with slices to demonstrate their competences by indicating amongst others personnel qualifications and experience on each slice. Item 4.1 – Section IV of the Tender Document indicates that during preliminary evaluation, the requirements provided in the Invitation to Tender would be considered.

From the above quoted provisions, the Appeals Authority observed that the requirement in relation to staff qualifications and experience was clearly

stated in Item 3 of the Invitation to Tender. Staff qualifications and experience under Item 1.12 – Section IV of the Tender Document was in relation to contracts with slices which is not the case in this Tender.

The Appeals Authority revisited Regulations 181 and 182 of the Regulations which provide guidance on the issuance of the Invitation to Tender and its contents. The provisions read as follows: -

*"181(1) A procuring entity that wishes to commence competitive tendering proceedings shall prepare a tender notice inviting tenderers to submit priced offers for the supply of goods, undertaking of works or provision of services required.*

*182. The invitation to tender shall contain the following information:*

- (a) the name and address of the procuring entity;*
- (b) the nature, quantity and place of delivery of the goods to be supplied or the nature, quantity and location of the works to be effected or the nature of the services and the location where they are to be provided;*
- (c) the desired or required time for the supply of the goods or for the completion of the works or for the provision of the services;*
- (d) a declaration, which shall not later be altered, that tenderers may participate in the procurement proceedings regardless of nationality or declaration that participation is limited on the basis of nationality;*



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- (e) the means or conditions of obtaining the solicitation documents and the place from which they may be obtained;*
  - (f) fees if any, to be charged by the procuring entity for the tender document;*
  - (g) the currency and means of payment for the solicitation documents;*
  - (h) the language in which the solicitation documents are available;*
  - (i) the physical address for the submission of tenders;*
  - (j) the deadline for the submission of tenders;*
  - (k) the physical address, hour and date for opening of tenders; and*
  - (l) the source of financing”.*

The Appeals Authority compared the above quoted provisions to the requirements provided under the Respondent's Invitation to Tender. It observed that the Respondent's Invitation to Tender contained information relating to areas where revenues were to be collected and eligibility requirements that were to be complied with by tenderers. Among the eligibility requirements provided included Item 3 which required tenderers to submit a list of staff and their experience. The Appeals Authority finds the Respondent's act of including in the Invitation to Tender a criterion relating to staff qualifications and experience to have contravened Regulation 182 of the Regulations which provides a clear guidance on what has to be included in the Invitation to Tender.

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The Appeals Authority revisited Regulation 184(1) (a), (b), (c), (2), (3) and (4) of the Regulations which reads as follows: -

"184. (1) *The solicitation documents shall contain the following information:*

- (a) *the criteria and procedures relating to evaluation of the qualifications of tenderers and further demonstration of qualification;*
- (b) *the requirements as to documentary evidence or other information that has to be submitted by a prospective tenderer to demonstrate his qualifications;*
- (c) *the nature and required technical and quality characteristics, of the goods, works or services to be procured, including, but not limited to, technical specifications, plans, drawings and designs as appropriate.*

(2) *The solicitation documents shall be prescribed to permit and encourage competition and such documents shall set **out clearly and precisely all information necessary for a prospective tenderer to prepare a tender.***

(3) *A **procuring entity shall use the appropriate standard tender documents issued by the Authority to address specific issues of a project in accordance with guidelines issued by the Authority.***



**(4) Any changes to the standard tender documents shall be introduced only through tender data sheets, or through special conditions of contract".**

(Emphasis added)

From the above quoted provision, procuring entities are required to use the appropriate Standard Tender Document issued by the PPRA to address specific issues of the project. The Appeals Authority revisited the PPRA's website. It observed that there is a specific Standard Tender Document for revenue collection issued on 3<sup>rd</sup> December 2021. The PPRA's Standard Tender Document has ten sections. The Appeals Authority reviewed some of the sections against the Respondent's Tender Document in order to ascertain if it complied with the requirements of the law. The findings of the Appeals Authority are stated hereunder:-

- i) Section I of the referred PPRA's Standard Tender Document is an Invitation to Tender. Its contents do not include tender requirements as was included in the Respondent's Invitation to Tender.
- ii) Section II is Instructions To Tenderers which is standard and procuring entities are not allowed to modify the same. Section II of the Respondent's Tender Document is titled "*HADIDU ZA REJEA YA MAEGESHO YA VYOMBO VYA USAFIRI*" and contained modified requirements of the Tender.
- iii) Section III of the PPRA's Standard Tender Document is Tender Data Sheet where the procuring entities are allowed to amend

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and insert specific requirements for the Tender. The Respondent's Tender Document did not contain Bid Data Sheet as per the provided format. Section III of the Respondent's Tender Document relates to instruction to tenderers.

- iv) Section IV of the PPRA's Standard Tender Document relates to price schedule. However, Section IV of the Respondent's Tender Document relates to "NYARAKA YA ZABUNI". The Respondent's price schedule that ought to be under Section IV is under Section VII of the Respondent's Tender Document.
- v) Section V of the PPRA's Standard Tender Document relates to Technical requirements of the tender. However, Section V of the Respondent's Tender Documents relates to General Conditions of Contract.

The Appeals Authority observed further that, the Respondent's Tender Document included Attachment A which had to be filled by tenderers. However, this Attachment A is nowhere to be found in the PPRA's Standard Tender Document. Therefore, based on the above observations the Appeals Authority is of the firm view that the Respondent did not comply with the format of the Standard Tender Document issued by the PPRA. On that basis, it goes without saying that the Respondent contravened Regulation 184 of the Regulations.

The Appeals Authority considered the Appellant's contention that, there was no slot in TANEPS window which required tenderers to attach a list of Key staff and their CVs. In ascertaining the validity of the Appellant's



contention, the Appeals Authority reviewed TANePS. It observed that there was no specific window for uploading the list of key staff and their CVs. During the hearing, the Respondent elaborated that the list of key staff and their CVs were to be uploaded in the TANePS window where the price schedule was uploaded.

The Appeals Authority reviewed the TANePS window particularly on the part where a price schedule was uploaded. It observed that the Respondent did not require tenderers to attach the list of key staff and their CVs as contended. The Respondent only required tenderers to indicate information relating to the statement of requirements and price schedules as provided under Section VII of the Tender Document.

In view of the above observation, a requirement for submission of the list of key staff and their CVs ought to have been included in the Bid Data Sheet. However, the Respondent inserted such a requirement in the Invitation to Tender. Based on this observation the Appeals Authority finds the Respondent's act of using a criterion in the Invitation to Tender to evaluate tenders to have contravened Section 72(1) of the Act and Regulation 203(1) of the Regulations which read as follows: -

***"72.-(1) The basis for tender evaluation and selection of the successful tenderer shall be clearly specified in the tender document.***

***203.-(1) The tender evaluation shall be consistent with the terms and conditions prescribed in the tender documents***



***and such evaluation shall be carried out using the criteria explicitly stated in the tender documents”.***

(Emphasis supplied)

In view of the above findings it is evident the Respondent's Tender Document did not comply with the appropriate format of the Standard Tender Document issued by PPRA. Under the circumstances, the Appeals Authority concludes the first issue in the negative that the disqualification of the Appellant was not justified.

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

Taking cognizance of the findings made on the first issue hereinabove, the Appeals Authority hereby allows the Appeal and nullifies the award made to the successful tenderer and the whole Tender process. The Respondent is ordered to re-start the Tender process in observance of the law and to use the appropriate Standard Tender Document issued by the PPRA. We make no order as to costs.

It is so ordered.

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

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



This decision is delivered in the presence of the parties this 21<sup>st</sup> day of September 2023.

**HON. JUSTICE (rtd) SAUDA MJASIRI**



.....  
**CHAIRPERSON**

**MEMBERS: -**

**1. ENG. STEPHEN MAKIGO**.....



**2. MR. PIUS MPONZI**.....