

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

APPEAL CASE NO. 86 OF 2010

BETWEEN

**EQUITY AVIATION SERVICES
(T) LTD.....1st APPELLANT**

**PRECISION AIR GROUND
HANDLING SERVICES LIMITED2ND APPELLANT**

AND

TANZANIA AIRPORTS AUTHORITYRESPONDENT

DECISION

CORAM:

1. Hon. A.G. Bubeshi, J. (rtd) - Chairperson
2. Hon. V.K. Mwambalasa - Member
3. Mrs. N.S.N. Inyangete - Member
4. Ms. B.G. Malambugi - Secretary

Co-opted Expert:

1. Eng. B. Muhegi - Expert from CRB

SECRETARIAT:

1. Ms. E.V.A. Nyagawa - Principal Legal Officer
2. Ms. F. R. Mapunda - Legal Officer

FOR THE 1st APPELLANT:

1. Ms. Joyce Masele – Legal Counsel
2. Ms. Stella Ndikimi – Legal Counsel
3. Rosemary Kacungira – Managing Director
4. Joseph Kyomo – Operations Manager

FOR THE 2nd APPELLANT:

1. Mr. Elias Mwashuuya – Legal Counsel
2. Mr. Elias Moshi – General Manager
3. Mr. Alfonse Kioko – Group Managing Director

FOR THE RESPONDENT

1. Mr. Mtengela Hanga- Head of PMU
2. Mr. Oscar Msechu – Legal counsel
3. Mr. Joachim E. Maambo – Legal Officer
4. Mr. Ramadhani Maleta – Legal Secretary

This decision was scheduled for delivery today 20th January, 2011, and we proceed to deliver it.

The appeal at hand was lodged by **M/s EQUITY AVIATION SERVICES (T) LTD** (hereinafter to be referred to as "**the 1st Appellant**") against **TANZANIA AIRPORTS AUTHORITY** commonly known by its acronym **TAA** (hereinafter to be referred to as "**the Respondent**"). Following notification of the Appeal, one tenderer who also took part in the tender under Appeal, namely, **PRECISION AIR GROUND HANDLING SERVICES LIMITED** decided to join this appeal as one of parties (hereinafter to be referred to as "**the 2nd Appellant**").

The said Appeal is in respect of Request for Proposal No. AE-027/2009-10/RFP/28 for the Provision of Ground Handling Services at Julius Nyerere International Airport Dar es Salaam. (Hereinafter to be referred to as '**the Tender**')

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

The Respondent advertised a Request for Proposals for Provision of Ground Handling Services at Julius Nyerere International Airport (hereinafter to be referred to as “**RFP**”) *vide*, The Guardian, Daily News, The East African, Mwananchi, Majira and Nipashe newspapers of 21st April, 2010.

The deadline for submission of proposals was set for 4th June, 2010, but was extended to 14th June, 2010, on which date the tender opening took place. Five proposals were submitted from the following companies:

1. Equity Aviation Services Ltd.
2. Mwanza Ground handling Co. Ltd.
3. Precision Air Ground Handling Services Ltd.
4. Paradise Group Co. Ltd.
5. Aviation Handling Services AHS/Menzies.

The said proposals were evaluated and recommendation for award of the **concession agreement** was made in favour of Aviation Handling Services AHS/Menzies for a

period of five years subject to successful contract negotiations and due diligence.

On 20th September, 2010, the 1st Appellant received a letter referenced ED.32/208/01F/12 dated 13th September, 2010, from the Respondent, informing them that their proposal was unsuccessful.

On 4th October, 2010, the Appellant *vide* letter referenced ES4/10/2010/TAA filed an application for review to the Respondent contesting the award results. The same was copied to the Public Procurement Regulatory Authority (hereinafter to be referred to as "**PPRA**").

On 12th October, 2010, the 1st Appellant received a letter from PPRA referenced PPRA/AE/027/33, advising them to submit their appeal to the Public Procurement Appeals Authority (hereinafter to be referred to as "**the Authority**") as the contract had already entered into force.

On 26th October, 2010, the 1st Appellant lodged their Appeal to this Authority.

On the part of the 2nd Appellant, the letter from the Respondent informing them of their being unsuccessful was received on 13th September, 2010. After seeking to know the reasons for their disqualification they were dissatisfied and on 8th October, 2010, the 2nd Appellant filed a formal application for administrative review to the Respondent. However, up to the time of filing this appeal no reply had been received from the Respondent.

On 15th November, 2010, the 2nd Appellant filed an application for administrative review to PPRA whereby a reply was received advising them to lodge Appeal to this Authority. At the same time another letter was received from PPAA notifying them that an Appeal on the same tender had already been lodged with the Authority and they were invited to join in the Appeal. On 11th January, 2011, the 2nd Appellant joined in the Appeal as a party.

SUBMISSIONS BY THE 1st APPELLANT

The 1st Appellant's documentary, oral submissions as well as responses from questions raised by Members of the Authority during the hearing may be summarized as follows:

That, the Respondent did not follow the proper procurement procedures as required under the Public Procurement Act of 2004, (Cap. 410) (hereinafter to be referred to as "**the Act**") due to the following reasons:

1. Procurement Method

- a) The Bid Document indicated that, this procurement was made under Public Private Partnership (hereinafter to be referred to as "**PPP**"). The position is supported by the repeated use of the term "Concession" in the Bid Document specifically in the following Sections;

- i) Section II - General Information of the RFP, Clause 2.2 paragraph 3 points on award of concession elimination of Clause on funding.
 - ii) Section III – General Information to Bidders. Clause 3.2 defines concession and concessionaire. Clause 3.8 expounds commitment of the Ground Handling Concession.
 - iii) Section V-Selection Criteria
Clause 5.5 elucidates on Concession Fees and Charges.
- b) Regulation 74(1) of the of Public Procurement (Goods, Works, Non consultant services and disposal of public assets by tender) Government Notice No. 97 of 2005 (hereinafter to be referred to as "**GN No. 97/2005**") stipulates that, Public Private Partnerships shall

include the following forms or combinations: service contract, management contract, leasing, joint ventures, partnerships, Build Operate Transfer, Build Own Operate, Design Build Operate Finance and Concessions.

- c) Section 59(3) of the Act requires public bodies undertaking solicited and unsolicited PPP projects to follow the procedures set out in the Regulation under the Act. The said provision requires the procurement procedures for PPP's to be in accordance with the system that is fair, equitable, transparent, competitive and cost effective, and in compliance with the provision of the Act.

- d) Regulation 74(7) & (10) of GN No. 97/2005, provides for the method of procurement for the proposed projects under PPP to be a two stage process in accordance with the Act and its Regulation. The first stage being the Request for Qualification (hereinafter to be

referred to as "**RFQ**"), followed by the second stage which is Request for Proposal (hereinafter to be referred to as "**RFP**") and based on Regulation 74(10) the selection of a preferred tenderer has to be made in accordance with the guidelines issued by PPRA.

- e) The Guidelines issued by PPRA in September, 2008, at pages 16-18 provide a thorough detail of the two stages process.

2. Invitation for Bids

- a)The procurement notice which appeared in Mwananchi newspaper was misleading as the heading seemed to indicate that it was a tender for Non-consultant services rather than a PPP project.
- b)It is clear that the Invitation for Bids has omitted reference to the first stage which would have been the RFQ. And if the Respondent intended to use a one stage

process, then the means of financing the project should have been mentioned in the Invitation for Bids (IFB). The Respondent's failure to do so inhibited transparency and equality of participation in the procurement process contrary to Regulation 9(d) of GN No.97/2005.

c) Regulation 83(4) of GN No. 97/2005 requires any changes introduced in the Tender Document to be done through the tender data sheet or special conditions of contract and not by introducing changes in the standard wording of the Standard Tender Document.

3. The RFP Document

a) The Respondent made major alterations to the RFP document contrary to Regulation 83(3) of GN No.97/2005, which requires a procuring entity to use standard tender documents issued by PPRA with minimum changes.

- b) The RFP document issued by the Respondent deviated from the Regulations and Guidelines.
- c) Item 4 of the RFP advertisement indicated that the award was to be made to two companies; on the contrary the award has been made to one company without any justification.

That, the evaluation criteria used by the Respondent were subjective and exclusively designed to favour the Successful Tenderer in the following circumstances;

- i) The background information set out under Section II of the General Information of the RFP, states that the Government of Tanzania in 2007 put in place new regulations to liberalize the ground handling sector aimed at instilling competition and thus affecting lower prices and an improvement of quality of services in the industry. However, Section V Clause 5.4 on the

Technical evaluation (Qualification and experience), shows that the criteria used was subjective as it required a tenderer to have operated in a competitive environment while the Respondent is aware that there is no competition at the JNIA. That it was obvious that, the Respondent was looking for a foreign tenderer possibly from a capitalist country.

- ii) Clauses 2.7 and 10.5 of the Instructions to Bidders (hereinafter to be referred to as "**ITB**") requires the bidders to have at least five years proven relevant ground handling experience in the aviation industry or in the ownership, development, management and operation of ground handling company at the International Airport code 4E. Such an evaluation criteria excludes all Tanzanian registered tenderers including the 1st Appellant.

- iii) The 1st Appellant obtained a First Class License to provide Ground Handling Services on 16th March, 2008.
- iv) The evaluation criteria stipulated by the Respondent rules out the possibility of any local tenderer succeeding in the tender as the industry opened up for competition in this area after Swissport's exclusivity came to an end in May, 2007.
- v) Regulation 101(5) of GN No 97/2005 prohibits procuring entities from including in a tender document any condition or specification to favour any supplier, service provider, contractor or asset buyer. With regard to the tender under Appeal, the Respondent contravened this requirement.

That, the procurement process was not fair, equitable or transparent and contravened the law. This was because of the following;

- The scores used by the Respondent were not within the ambit of the law. The score set out under Section V indicated a maximum score of 250 points for Technical and Financial evaluation respectively, making a total of 500 scores. That is contrary to the Guidelines on Evaluation of RFP issued by PPRA which requires the total score of all criteria and some criteria must add to 100 points.
- The scoring would have been based on weighted average by clearly indicating that the minimum score for each criterion but with a total of 100 points but again the Respondent failed to do so.
- The Respondent did not indicate the assessment rating for each criterion.
- That, the 1st Appellant complied with all technical and financial requirements hence deserved the award.

The 1st Appellant therefore prayed for the following;

- i. A declaration that the Respondent did not comply with the rules and regulations stipulated under the Act.
- ii. A declaration that the Respondent is bound by the procurement procedures as provided under the law.
- iii. Nullification of the Respondent's decision and direction that a fresh tender be initiated to allow fair, equitable and a transparent process.
- iv. Order the Respondent to compensate the Appellant a sum of Tshs 60,000,000/- being general, specific and punitive damages suffered by the 1st Appellant as a result of the Respondent's unlawful decision.

- v. Order the Respondent to pay costs of and incidental to the tendering process and this Appeal.
- vi. Such other orders and/or reliefs as the Authority may deem just to grant.

REPLIES BY THE RESPONDENT TO THE 1ST APPELLANT'S SUBMISSIONS

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

That, the tender under appeal is not a PPP as claimed by the 1st Appellant.

That, the mere fact that there was a repeated use of the word '**concession**' in the Bidding Document does not mean that the project is under PPP , as for many years back even before the introduction of the concept of the

Public Private Partnership there had been several concessions.

That, concession is a term which is used when one person (whether public or private) grants to another person his/its right of doing certain business in consideration for concession fee from the person who was granted that concession right. Concession is a term which is in use for so many years while PPP is a new concept though in some project they may interrelate.

That, the Respondent has options under Sections 47 and 48 of the Act to start procurement process at the stage of pre-qualification or at the stage of request for proposals as it was done in this particular tender.

That, since the pre-qualification was not done prior to the awarding stage post-qualification was to be conducted and that included the conduct of the due diligence to the successful tenderer before signing of the contract.

That, the invitation for tenders was advertised as per Regulation 80(5) and 81 of GN. No. 97/2005 and it was not misleading as alleged by the 1st Appellant.

That, the procurement under the dispute is for Non consultant services as per GN No. 97/2005 and not a PPP as the 1st Appellant forces it to be.

That, the alleged changes of the Bidding Document (if any) were in compliance with Regulation 83(3) of GN No. 97/2005 which allows such changes when necessary to address specific issues on such highly specialized and sensitive areas such as the provision of airport ground handling services which is based on international standards, safety and security.

That, the Tender Document was in compliance with the relevant law, regulations and Guidelines. Also the procurement and selection process was fair, equitable, transparent and in accordance with the law.

That, the Evaluation Criteria used were neither subjective nor exclusively designed to favour the tenderer who has been awarded the tender, rather the criteria aimed at to maximize competition and obtaining a service provider with the capability and experience necessary for providing the level of ground handling services required for such an international Airport, regardless of whether the winning company is local or foreign.

That, the criteria of a foreign bidder to partner with local tenderers aimed at assisting local tenderers.

That, the scores in the RFP document were set out in accordance with the law and regulations.

That, it is true that the advertisement showed that the award was to be made to two companies, however, the award was made to the Successful Tenderer alone because another firm namely Swissport Company which had already been secured through single source and

already contracted to provide services for a period five years. Hence there was need to contract two tenderers.

That the 1st Appellant is not entitled to any of the reliefs prayed for, and the Respondent prayed that their Appeal be dismissed with costs.

SUBMISSIONS BY THE 2ND APPELLANT

The 2nd Appellant's documentary, oral replies as well as responses from questions raised by the Members of the Authority during the hearing may be summarized as follows:

That, the Respondent did not follow proper procedures stipulated in the Act and the Tanzania Civil Aviation Ground Handling Services Regulations, 2007.

That, the reasons given for rejecting the 2nd Appellant's proposal are not justifiable.

That, the Financial Statements and Bid Security submitted having the name of Precision Air Company Ltd were valid as Precision Air is well known to the Respondent as they have been working together for several years. Furthermore, the Respondent could have sought for clarification on the areas which were not easily understandable.

That, the majority of shareholders of the 2nd Appellant are the same for Precision Air Company Limited. Such information could easily be obtained from the Memorandum of Association attached to the proposal or further clarification could have been obtained from the Registrar of Companies.

That, it is true that the Bid Security issued bears the name of Precision Air Company Limited, but the proper information could easily be obtained from Kenya Commercial Bank where the Respondent could easily verify that the two companies are related.

That, the procurement was biased against local bidders, as some of the requirements favoured foreign companies. For instance the requirement of five years experience was not fair as no local company had such experience since the license for ground handling services started to be issued in 2007 after the exclusivity of the Swissport Company came to an end.

That, the 2nd Appellant sought for clarification on the criteria which were biased but there were no clear answers from the Respondent regarding the queries.

That, Precision Air Company Ltd who is a major shareholder of the 2nd Appellant has experience in providing ground handling services from the period they started flying in Tanzania as they have been handling their flights in various Airports.

That, the 2nd Appellant has a Joint Venture with Kenya Airways who have experience in providing ground handling services in various Airports but the same was

not considered as a relevant experience by the Respondent.

That, the selection process was not fair and transparent as evidenced by the Respondent's failure to adhere to the laid down principles and procedures.

Therefore, the 2nd Appellant prayed for the Authority to grant the following orders:

- a) A declaration that the Respondent did not comply with the rules and regulations provided under the Act and the Tanzania Civil Aviation Ground Handling Services Regulations, 2007.
- b) The Respondent's decision on the award of the tender under Appeal be quashed.
- c) The Respondent compensate the 2nd Appellant a sum of Tshs. 50,000,000/- being general, specific and punitive damages suffered.

- d) The Respondent compensate the 2nd Appellant for costs of and incidental to the tendering process and for this Appeal.

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

REPLIES BY THE RESPONDENT TO THE 2nd APPELLANT'S SUBMISSION

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

That, the procurement process in general was open and transparent but the 2nd Appellant failed to comply with some of the requirements set out in the RFP document.

That, during Preliminary Evaluation, the 2nd Appellant was found to be non responsive for submitting Financial

Statements and Bid Security which bear the name of the Precision Air Company Limited while that was not the company which submitted the bid.

That, the 2nd Appellant knows clearly that each company bears its own responsibilities under the law. Hence the Respondent could not treat the document submitted from a different company to be that of the 2nd Appellant even though the companies are related.

That, all required legal procedures were followed, and there were no bias against local tenderers and the selection process was fair and transparent.

The Respondent therefore prayed that the Appeal be dismissed with costs.

ANALYSIS BY THE AUTHORITY

Having gone through the documents submitted and having heard the oral submissions from parties, the

Authority is of the view that, this Appeal is centred on the following main issues:

- **Whether the tender was floated as a Public Private Partnership and if so, whether the procedural requirements were observed.**
- **Whether the Evaluation process was conducted in accordance with the law**
- **Whether the award 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 follows:

1.0 Whether the tender was floated as a Public Private Partnership project and if so, whether the procedural requirements were observed.

In its endeavour to ascertain whether the tender was floated as a Public Private Partnership and if so whether the procedural requirements were observed, the Authority, reviewed the documents submitted and the contesting oral submissions by parties *vis-a-vis* the applicable law.

In so doing the Authority revisited the 1st Appellant's submission that, the tender was purely a PPP project as there has been a continuous use of the word "**concession**" throughout the RFP document. That the word concession is commonly used in the PPP projects rather than in any other method of procurement.

In reply, the Respondent submitted that the mere use of the word "**concession**" does not mean that the project was a PPP. The Respondent further alluded that, the word concession was in existence even before the term PPP

came into being and it has been used in various transactions not only in the PPPs, although, currently it is also used under PPP projects.

In order to ascertain the validity of the parties' arguments, the Authority revisited the RFP document issued by the Respondent in order to determine whether the document indicated that the tender was a PPP. In the course of doing, so the Authority noted that, the RFP document issued by the Respondent is similar to the Standard Request for Proposal document for PPP projects issued by PPRA in August, 2008. The said similarities on the above mentioned documents are noted in the following areas:

- Definitions of various words, including, concession, concession period and concessionaire are the same. The said definitions are found under Section III of the Respondent's RFP document as well as on page iv and v of the definitions of key terms of the Standard RFP document for PPPs.

- Clause 12 of the Respondent's RFP document, resembles Clause 12 of the Standard RFP document for PPPs save for the modification which has been done in the Respondent's RFP document.
- Clauses 13, 14 and 15 of the Respondent's RFP document which are for Bid currencies, Bid Validity Period and Bid Security are also similar to Clauses 13, 14 and 15 of the Standard RFP document for PPPs.
- Clauses 25, 26, 27, 28 and 29 of the Respondent's RFP document which provide guidance on how evaluation has to be carried out are similar under the same clauses in the Standard RFP document for PPPs.
- Clauses 31, 32, 33 and 34 of the Respondent's RFP document which are for negotiation, notification of award and signing of the concession agreement resemble the same

clauses in the Standard RFP document for PPPs, save for some modification done in the Respondent's RFP document for purpose of providing specific information to tenderers.

- Selection Criteria found under Section V of the Respondent's RFP Document are similar to the Evaluation Criteria specified under Section VII of the Standard RFP document for PPPs.

After observing that, there are a lot of similarities in the Standard RFP document for PPPs with the Respondent's RFP document the Authority is of the view that, the Respondent's act of using such a document in preparation of their RFP document implies that they had intended that the project be a PPP. The Authority also observed that, the Standard RFP document for PPPs has been issued by PPRA so as to provide guidance on how procurement of a PPP should be done. Also the Standard Document for RFP for PPPs allows modification according to the requirements of that particular PPP project.

Furthermore, the Authority revisited the National Public Private Partnership Policy issued in November, 2009, (hereinafter to be referred to as **“the PPP Policy”**) and noted that under page vii Item 1.1 the term PPP has been defined to mean;

“an arrangement between public sector and private sector entities, whereby the private entities renovate, construct, operate, maintain and/or manage a facility in whole or in part in accordance with output specifications”

According to the same the PPP Policy, the PPPs for operations of existing public assets may include among others services, management, leasing contracts and concessions. For the purpose of this appeal the Authority deems it prudent to use the definition of the word **“concession”** as it appears under the PPP Policy and compare it with the Respondent’s definition of the same word which appeared in the RFP document.

According to the PPP Policy, concession means;

“an arrangement whereby the government grants a private entity exclusive rights to provide, operate and maintain an asset over a long period of time in accordance with performance requirements set forth by the government” (Emphasis added)

According to Respondent’s RFP the word concession means;

“Right to be granted to the successful bidder to operate businesses comprised in the project”.
(Emphasis supplied)

From the above quoted definitions of the word concession the Authority is of the firm view that, both definitions mean the same thing, except the definition under the National Public Private Partnership Policy has more elaborate information than that of the Respondent’s RFP

document. That means the use of the word concession in the Respondent's RFP document also implies that the tender is a PPP.

Upon further review of the documents, the Authority noted that the minutes of the Tender Board meeting held on 31st August, 2010, **indicated that two members of the Tender Board who are experts** in PPP matters took part in evaluation. That shows even Respondent's Tender Board's recognized the tender to be a PPP project.

Furthermore, the Authority noted that the Respondent's statement of reply written on 12th November, 2010, signed by the Head of the Procurement Management Unit indicated that the tender is a PPP, although, the amended statement of reply filed on the date of hearing denies the project to be a PPP, arguing that it was for provisions of non consultant services.

The Authority rejects the Respondent's submission in this regard that, the tender was for provision of non consultant services as the same did not adhere to the

procedures laid down under the GN No. 97 of 2005 which had to be complied with if the procurement was for non consultant services.

In view of the above findings the Authority concurs with the 1st Appellant's argument that the tender was identified as a PPP project.

Having established that the tender under appeal is a PPP the Authority went further to ascertain whether the procedural requirements for PPPs were adhered to in that procurement process. In so doing the Authority reviewed the applicable law and the Request for Proposal Document issued by the Respondent vis-à-vis documentary and oral submissions by parties.

The Authority revisited Regulation 74(3) of GN No. 97/2005 which sets out the procedures to be followed by a procuring entity in the procurement of projects which involve public private partnerships. The said Regulation 74(3) states as follows:

“As soon as the procuring entity identifies a project that may be concluded as public private partnership, it must:

- a) ensure that it has the expertise within that procuring entity to proceed with a public private partnership**
- b) Appoint project officer from within or outside procuring entity.**
- c) Appoint a transaction advisor”** (Emphasis supplied)

The evidence submitted to this Authority shows that, whilst the Respondent may have had experts to proceed with PPP project, it was not indicated whether they had appointed a project officer and a transaction advisor. That means they failed to comply with paragraph b and c of Regulation 74(3) of GN No. 97/2005, cited above.

Furthermore, the Authority observes that a feasibility study was not done as required by Regulation 74(4) of GN No. 97 of 2005, which provides as hereunder:

“For public private partnership project, the procuring entity shall undertake a feasibility study in order;

- a) to confirm affordability of the project for the procuring entity if it will incur any financial commitments**
- b) to establish factors that will determine value for money**
- c) to assess the potential of a public private partnership to deliver value for money**
- d) to identify the forms of public private partnership most likely to deliver for value for money**
- e) to establish optimum scope of the public private partnership**
- f) to identify parameters to be used to assess value for money at the procurement stage**
- g) to provide a sound basis for the procuring entity to decide on the procurement approach**
- h) to set out the proposed allocation of financial and technical risks between the procuring entity and the private party; and**
- i) to explain the capacity of the procuring entity to procure implement, manage, enforce and monitor the public private partnership project” (Emphasis added)**

The above quoted Regulation clearly stipulates the benefits of conducting a feasibility study after identifying that the project is to be tendered as a PPP. This vital requirement was not adhered to by the Respondent. As a result they found the assignment to be complex as it was conceded to by the Respondent during the hearing.

It is the considered view of the Authority that, the Respondent's failure to conduct feasibility study may have contributed to the complexity of the assignment.

The next stage after feasibility study was for the Respondent to advertise for the Request for Qualification in line with Regulation 74(7) of GN. No. 97/2005 which provides as follows;

“The procuring entity shall advertise the request for qualification in the form of the specific procurement notice in at least one newspaper of wide and general circulation in the United Republic of Tanzania...” (Emphasis supplied)

The reason for conducting a RFQ is to allow the procuring entity to identify eligible bidders who will take part in the tender process. The Authority concurs with the 1st Appellant's submission that the Respondent failed to adhere to this mandatory requirement of the law as the tender process started at the invitation for Request for Proposal (RFP) instead of starting with the RFQ stage.

The next stage after the RFQ would have been the invitation for RFP. Upon review of the document submitted, the Authority noted that the Respondent had started the tender process at this stage by issuing the RFP document which was similar to the Standard Document for RFP for PPPs issued by PPRA in August, 2008. It was this act that shows that the Respondent had treated this tender as a PPP project.

The Authority revisited the 1st Appellant submission that, although the Respondent had opted to use the Standard RFP document for PPPs they did not comply with the requirements of the Invitation for RFP as prescribed in

the Standard RFP document. The Appellant further submitted that, the "Invitation to Bid" which appeared in Mwananchi newspapers of 20th April, 2010, was misleading as the heading seems to indicate that this was a tender for non-consultant services rather than a PPP project.

In reply the Respondent submitted that, that the Invitation to Bid was not misleading as claimed by the 1st Appellant as it was made in accordance with the regulations and guidelines provided for under the law.

In order to ascertain the validity of the parties' arguments the Authority revisited the Standard RFP document for PPPs and noted that it has contained a format for an Invitation for RFP.

The Authority reviewed the Respondent's Invitation for RFP in comparison with the Standard RFP document for PPPs and observed that, the Invitation for RFP issued by the Respondent did adhere to the format provided for in the Standard RFP document for PPPs except for the

words “**Invitation for Bids**”. Based on that, the Authority is of the view that, it is true that the Respondent had erred in inserting the words ‘Invitation for Bids’ while it was ‘Invitation for RFP’, thus, the Respondent failed to comply with the requirement of the Standard RFP document for PPPs. However, the Authority is of a further considered view that, the appearance of the words “Invitation for Bids” did not prejudice the 1st Appellant’s position in participating in the tender process.

The Authority further reviewed the Respondent RFP’s document in order to establish whether it is in accordance with the Standard RFP document for PPPs as it has already indicated earlier in this decision that the project was identified to be a PPP.

In the course of so doing the Authority revisited the 1st Appellant’s submission that, the RFP document issued by the Respondent was not in accordance with the Standard RFP document for PPPs as it has deviated from it in the following areas;

- Purpose of issuing the RFP - not in line with the PPRA Standard Document.
- General Information to Bidders – not in line with PPRA Standard Tender Document.
- Minimum Project requirements - the entire part has been omitted.
- Instruction to Bidders- a lot of insertions have been made on the document.
- Proposal Data sheet- the entire part has not been included.
- Formats for submission and Standards forms- The proposed Implementation schedule, negotiation and award of PPP have been omitted.

The Respondent in reply submitted generally that, the modification which had been done to the RFP document was in accordance with the procedures stipulated under the Act hence, it cannot be argued that it was not in compliance with the law.

In order to ascertain the validity of the argument by parties' the Authority revisited the Respondent's RFP document together with the Standard RFP document for PPPs and noted, amongst others, the following shortfalls in the Respondent's RFP document;

a) **The purpose of issuing the RFP** - The Respondent's purpose of issuing RFP was not in accordance with the format shown in the Standard RFP document for PPPs as it lacked some of the information which were to be included. Some of this missing information includes business information, initial market assessment, supportive national investment climate and investment approach.

b) **General Information to Bidders**

The Authority noted that under Section III of the Respondent's RFP document there is paragraph relating to purpose of information to bidders and definitions while the Standard RFP

document for PPPs requires that Section III to include, among others, the general description of the project and project frame work.

c) **Minimum Project Requirements**

Upon review of the Respondent's RFP document the Authority noted that, there is no part which provides, information needed for the Minimum Project Requirements.

The Authority finds the Respondent's failure to include the information relating to Minimum Project Requirements to be contrary to the Standard RFP document for PPPs which requires the Minimum project requirements to include information relating to minimum technical requirements, business requirements and risk management.

d) **Instructions to Bidders**

The Authority noted that all modifications which were required to be done in the Proposal Data sheet were done in the Instruction to Bidders, contrary to the requirements of the Standard RFP document for PPPs which requires any modification in the RFP document to be done in the Proposal Data Sheet.

e) **Proposal Data Sheet.**

The Authority upon review of the Respondent's RFP document noted that the Proposal Data Sheet was not part of that document contrary to the format provided in the Standard RFP document for PPPs which provides for mandatory inclusion of the Proposal Data Sheet in the RFP document so as all modification relating in the Instruction to Bidders could be done in that part (Proposal Data Sheet).

f) **Selection Criteria.** Generally the Detailed Technical Evaluation criteria differs from Clause 2.7 of the ITB which states that bidders must prove that they are able to comply with all

International Standards for ground handling as defined Annex A of 2009 version of IATA Standard Ground Handling Manual (AHM 810).

Having pointed out the shortfalls noted in the Respondent's RFP document the Authority accepts the 1st Appellant submission that the RFP document issued by the Respondents lacked some information contrary to Section 63 (2) of the Act which requires the tender document to be worded in such a way so as to maximize competition in the procurement process. For purposes of clarity the Authority reproduces the said Section as hereunder;

"The tender document shall be worded so as to permit and encourage competition and such documents shall set forth clearly and precisely all the information necessary for a prospective tenderer to prepare tender for the goods or works to be provided". (Emphasis supplied)

The Authority also considered Section 58 of the Act which is reproduced as hereunder;

S.58(1) "All public procurement and disposal by tender shall be conducted in accordance with the basic principles set out in this Act"

S. 58(2) Subject to this Act all procurement and disposal shall be conducted in a manner to maximize competition and achieve economy, efficiency, transparency and value for money"
(Emphasis added)

Based on the above quoted provisions, the Authority is of the view that, the Respondent was required to prepare an RFP document in accordance with the law. The act of the Respondent preparing and issuing an RFP document which was not in accordance with the Standard format for RFP's for PPPs contravened the above quoted provisions of the law. Furthermore there was no evidence submitted

before this Authority to show that the Respondent's RFP document was approved by PPRA before the issuance of the said document to tenderers.

Thus, the Authority agrees with the 1st Appellant that the Respondent's RFP document did not comply with the requirements of the Standard RFP document for PPPs.

In view of the above findings, the Authority is of the firm view that, the procedural requirements pertaining to PPPs were not adhered to by the Respondent during the procurement process of the tender.

Accordingly, the Authority's conclusion on issue number one is that the tender was floated as a PPP but the procedural requirements pertaining to PPPs were not adhered to.

2.0 Whether the Evaluation process was conducted in accordance with the law

In resolving this issue the Authority reviewed the documents submitted and the contesting oral submissions by parties *vis-a-vis* the applicable law and the RFP Document.

In so doing the Authority reviewed the Respondent's RFP document and noted that Clause 25, 26, 27, 28 and 29 of the Respondent's RFP document provides for the procedure to be followed during the evaluation process. Also Section V of the of the same RFP document provide for the evaluation criteria under the two stages of which the evaluation is to be carried out.

The Authority reviewed the Evaluation Report in order to ascertain whether such evaluation was conducted in accordance with the RFP document as well as the Guidelines for Evaluation of RFP for PPPs issued by PPRA in September, 2008.

In so doing the Authority, noted that the evaluation process started with the Preliminary evaluation whereby tenders were checked for the following;

- signed form of bid,
- Bid security,
- Power of Attorney (notarized),
- Compliance with 150 days validity period,
- Statement of financial capability,
- Information of bidders experience and expertise,
- Information regarding to litigation,
- Joint venture agreement (in case of joint venture), and
- Anti-bribery policy.

The Authority noted further that, during Preliminary Evaluation, the 1st Appellant complied with all the requirements and therefore qualified for the next stage of evaluation. As for the 2nd Appellant the Authority noted from the Evaluation Report that the company was found to be non responsive for submitting Bid Security and Financial Statement belonging to **Precision Air Services Limited** instead of the **Precision Air Ground Handling Services Ltd** or the **Joint Partner Kenya Airways** who were the tenderers in this tender.

The Authority revisited the 2nd Appellant's submission in relation to this point that, the rejection of their bid at the Preliminary stage was not proper as the document which was submitted belonged to Precision Air Services Limited who is among the majority shareholders of the 2nd Appellant. And that if the Respondent failed to understand how the two companies are related, they could have sought for clarification as all the information showing how the two companies were related and their liabilities were available and could easily be submitted to them. Furthermore, the information regarding shareholders could easily be obtained from the Registrar of Companies and details of the Bid Security could have been obtained from the Kenya Commercial Bank.

In reply to the 2nd Appellant's submission the Respondent submitted that, the 2nd Appellant and Precision Air Services Ltd are two different companies and each bears its own liabilities under the eyes of the law, hence it cannot be argued that even the document of Precision Air Services Ltd could have been accepted as the companies are related.

In resolving that issue, the Authority analyzed the two grounds which led to the 2nd Appellant's disqualification separately;

(a) Bid Security

The Authority revisited the tender document submitted by the 2nd Appellant and noted that they had attached a letter which shows that the Bid Security submitted was in the name of Precision Air Services Ltd who was claimed to be the majority shareholder with 99%. The Authority revisited Clause 15 of the ITB and noted that it is mandatory for the tenderers to submit Bid Security of their own company as it secures the procuring entity in a case of defaults by tenderers. For purposes of clarity the Authority reproduces Clauses 15.1 and 15.6 of the ITB as follows;

“15.1 The bidder shall furnish as part of its financial bid an original Bid Security, in

the amount of Tshs. 50,000,000 or equivalent freely convertible currencies”.

“15.6 The Bid security shall be forfeited:

If a bidder withdraws its bid during the bid validity period

In case of a successful bidder if he fails to sign the relevant agreement or to furnish Performance Bond...” (Emphasis added)

From the above quoted Clauses the Authority is of the view that, the submission of the Bid Security was among the mandatory requirements to be complied with by the tenderers and there was no option given to tenderers that they could submit a Bid Security of major shareholders as claimed by the 2nd Appellant.

The Authority further revisited Clauses 25.1 and 25.2 of the ITB which provides as hereunder;

“25.1 prior to detailed evaluation of bids, TAA will determine whether each bid:

Meets the eligibility criteria defined in ITB Clause 2

Has been properly signed

Is accompanied by the required securities

Is substantially responsive to the requirements of the bidding documents

TAA's determination of the bid's responsiveness will be based on the contents of the bid itself".

"25.2 A substantially responsive bid is the one which conforms to all the terms, conditions and specifications of the bidding documents, without material reservation or deviation...

If rectified, would affect unfairly the competitive position of other bidders presenting substantially responsive bids".

(Emphasis added)

Based on the above quoted provisions the Authority is of the view that the evaluation of tenders was required to

be done in accordance with the criteria specified in the RFP document so as to establish tenderers compliance. Thus, non compliance would result in disqualification as rectification could unfairly affect the rights of other parties in the process. Therefore, the Authority finds the 2nd Appellant to have been fairly eliminated at the preliminary stage for failure to submit a proper Bid Security.

(b) Financial Statements

The Authority revisited the 2nd Appellant's Tender Document and noted that they had submitted Financial Statements of **Precision Air Services Ltd** and not of **Precision Air Ground Handling Services Limited**.

The Authority revisited the Respondent's RFP document and noted that, the financial capacity of tenderers was evaluated under Detailed Financial Evaluation. The Authority noted further that under Item 5.5.1 of the Respondent's RFP document more details were provided on what had to be considered when evaluating business

criteria. For instance, when evaluating financial capacity the following were to be considered;

“Are the asset values of the bidding firm at least USD 5 Million?

If the bidding firm is a newly created company or joint venture, has it met this criterion with respect to financial assets of its parent shareholders or partners, weighted in proportion to their shareholding or participation?” (Emphasis added)

Based on the above quotation the Authority is of the view that, tenderers were allowed to submit financial information of their parent shareholders or partners if their company did not meet the criterion of financial capacity due to being newly formed. Therefore, the 2nd Appellant had an option of submitting the Financial Statements of Mr. Michael N. Shirima, who appears as the majority shareholder of Precision Ground Handling Company owning 51% of the shares or that of Kenya Airways who owns 49% of the shares of the company as

shown in their Memorandum of Association. The act of the 2nd Appellant submitting Financial Statements of Precision Air Services Limited who was not among the shareholders of their company was contrary to the requirements of the Respondent's RFP.

The Authority is therefore of the view that, the Respondent was right in disqualifying the 2nd Appellant for failure to submit the required Financial Statements and that the act of submitting Financial Statements of Precision Air Services Ltd was not proper at law.

The Authority after reviewing the Preliminary Evaluation went on to review the Detailed Evaluation. It was noted that, during this stage tenderers were evaluated on the basis of the following criteria:

a) Qualification and Experience

- Experience in operating a successful ground handling business;
- Experience in start up operations in competition with existing providers;
- Organization structure;

- Management approach and commitment ;
 - Ground support and facilities;
 - Ground operations manual;
 - Safety Management systems;
 - Quality Assurance; and
 - Local Participation.
- b) Project understanding approach and creativity
- Presentation and Clarity;
 - Project understanding;
 - Flexibility and adaptability;
 - Environmental issues; and
 - Proposed project Implementation Schedule

The Authority revisited the Evaluation Report and noted that the evaluation criteria used were in accordance with the Respondent's RFP document as well as the Evaluation Guidelines for RFP for PPPs.

The Authority further revisited the 1st and 2nd Appellant's submission on this point. Starting with the 1st Appellant that some of the criteria provided in the RFP document

were biased and aimed at favouring foreign tenderers. That one of the criterion which was claimed to be biased was the requirement to show **five years proven relevant ground handling experience in aviation industry**. The 1st Appellant found this requirement to be discriminatory as it excluded local tenderers while the Respondent's knows that the licenses for ground handling operations started to be issued in 2007. Hence, there are no local tenderers who are able to meet such a requirement. The 1st Appellant also claimed to have experience of handling small flights for more than ten years, but the same was not considered by the Respondent.

The 2nd Appellant also submitted that, the requirements of five years experience was biased and the same was contrary to Tanzania Civil Aviation Ground Handling Services Regulations, of 2007 and Decision No. 1 of 2009 of the Respondent's Board of Directors.

The Respondent in reply submitted that the criteria were not biased and they were formulated in a way that the

best ground handling service provider could be obtained so as to as get the best services at the Airport. Also the tender under appeal was an International Competitive tender, hence, local tenderers had an option of entering into a Joint Venture or in association with foreign tenderers so as to make their bid more competitive.

The Authority having considered the submission of the parties is of the view that, the requirement of Five Years experience in aviation industry was not a discriminatory requirement as the public interest of the country necessitates the need of getting the best service provider in ground handling so that best services could be obtained at JNIA.

Furthermore, the Authority revisited Clause 2.1 of the ITB and noted that, it provides for an option to tenderers to participate as a natural person, private entity or government owned entity or any combination of them with a formal intent to enter into an agreement or under the existing agreement in the form of Joint Venture, Consortium or Association. The Authority finds the RFP

document to have provided an option to local tenderers to associate themselves with other qualified tenderers so as to fit in the competition.

Also the Authority noted that, Clause 2.3 of the ITB provides that, foreign tenderers were required to have at least 30% **active participation** by a local Tanzanian partner. This shows that, the Respondent's RFP document intended to ensure that there would be a wide participation of the local tenderers in the bidding process. Thus, it is the considered view of the Authority that, tenderers who did not possess the five years experience could have used the option of going into a Joint Venture or association as provided for under Clauses 2.1 and 2.3 of the RFP document. Therefore the Authority finds that the requirement for one to possess at least five years experience to be non discriminatory as claimed by both Appellants.

Upon further review of the Evaluation Report the Authority noted that, under the criterion of local participation all tenderers including the Successful

Tenderer, namely, M/s Aviation Handling Services/AHS were awarded equal marks, that is 20, for each firm. The Authority reviewed all the tender documents submitted by the tenderers in order to verify if all tenderers had complied with such a requirement. In course of so doing the Authority noted that the tender document of the successful tenderer had indicated that, there is **30% active local participation** without identifying who was that local partner and what active role they have in the Successful Tenderer's Company.

The Authority revisited the Respondent's RFP document and noted that under Section V (Selection Criteria) Page 3, Local Participation has been expanded to enable tenderers to know what has to be complied with under such a criterion. For purposes of clarity the Authority reproduces the said criterion as hereunder;

“Local Participation

How does the bidder commit to utilise local firms, staff and other resources in

developing and implementing the project?”
(Emphasis added)

Based on the above quotation the Authority is of the view that, the Evaluators were required to check whether the successful tenderer's proposal shows how the local partner will be utilized in the process of implementing the project. The Evaluators' failure in evaluating such a requirement raises doubt as to whether the said local partner was checked if they had complied with Clause 10.1 of the ITB.

Further, the Evaluation Report does not show how the criterion of Local Participation was assessed under Detailed Evaluation so as to verify Successful Tenderer's compliance. The Respondent was asked during the hearing if they knew the name of the partner who had been included by the Successful Tenderer in order to meet the requirement of local participation. In reply the Respondent submitted that the partner is currently not known but they expected to get all the information at the time when they will be conducting due diligence.

The Authority finds the Respondent's act of not verifying the existence of the local partner mentioned by the Successful Tenderer in their Bid , to have contravened Clause 10.1 of the of the ITB which provides as hereunder;

“Pursuant to ITB Clause 9, the Bidder shall furnish as part of its bid, document establishing bidders eligibility to Bid and its qualifications to perform the concession agreement if its bid is accepted” (Emphasis added)

Furthermore, the Authority is of the view that, failure by the Successful Tenderer to show how the local partner will be utilised in implementing the project to contradict the requirements of Clause 10.3 of the ITB which requires bidders to be subjected to eligibility criteria. The Authority also finds the Respondent's act to have contravened Section 46(4) of the Act which requires evaluation criteria to be applied equally to all tenderers in

the evaluation process. The Authority reproduces Section 46(4) as hereunder:

“Any qualification criteria shall be made known to, and shall apply equally to all suppliers, contractors or consultants and a procuring entity shall impose no discriminatory criteria, requirement or procedure with respect to qualifications of any supplier, contractor or consultant”. (Emphasis added)

Thus, it is the considered view of the Authority that the successful tenderer ought to have been disqualified at the Technical Evaluation stage for failure to show eligibility information of the local partner having 30% local participation.

Upon review of the Post-qualification analysis the Authority noted that, the said Post-qualification to the Successful Tenderer was done through internet search. During the hearing it was stated by the Respondent that further information was to be obtained at the time of

conducting due diligence which was to be done at the conclusion of the concession agreement.

The Authority revisited Clause 29 of the Respondent's RFP document which provides the guidance and the necessity of conducting Post-qualification. The said Clause 29 is hereby reproduced as follows;

"29.1 Post qualification shall be undertaken to ascertain the information contained in the preferred bid prior to signing the Concession Agreements"

"29.3 The determination will take into account the bidder's financial, technical, and managerial capabilities. It will be based upon documentary evidence of the bidder's qualifications submitted by the bidder as Pursuant to ITB sub Clause 10.3 as well as such

other information as TAA deems necessary and appropriate...”

“29.4 An affirmative determination will be a pre requisite for award of the contract to the Bidder. A negative determination will result in rejection of bidder’s bid in which event TAA will proceed to the next preferred Bidder.”

(Emphasis added)

Based on the above quoted provision the Authority is of the view that, Post-qualification was to be conducted so as to enable the Respondent to verify if the Successful Tenderer had the required capacity to execute the contract. The Respondent’s act of conducting Post-qualification through the website raises doubts if proper information was obtained to enable verification. Furthermore nowhere in the Evaluation Report is it shown that the Respondent applied the Post-qualification criteria specified under Clause 29(3) of the Respondent’s RFP document. Hence the Authority finds the Respondent to

have erred in law for conducting such a Post-qualification which was contrary to the criteria set forth in their own RFP document.

The Authority also noted from the documents submitted that, the Respondent intended to enter into contract negotiation which would be followed by a due diligence process. During the hearing it was evident that the Respondent is now at the negotiation stage. The Respondent conceded that they had mistakenly notified all other unsuccessful tenderers. The Authority finds the Respondent's act to be improper and contrary to the law as due diligence was to be conducted before the parties enter into negotiations so that by the time of concluding the negotiations, the Respondent will have established whether or not the successful tenderer is capable of executing the project. The Authority fails to understand what will be the recourse for the Respondent if the Successful Tenderer is found to be incapable of performing the contract while all other unsuccessful tenderers have already been notified.

Further, the Authority finds the Respondent's act of notifying the unsuccessful tenderers before signing of the contract, to have contravened Clauses 29.4 and 33.2 of the ITB which provide guidance as when unsuccessful tenderers have to be notified of the tender results. For purposes of Clarity the Authority reproduces Clause 33.2 of the ITB as follows:

“Upon the successful bidder's furnishing of a performance security pursuant to ITB Clause 35, TAA will promptly notify each unsuccessful bidder the name of the successful bidder and will discharge the bid security of the unsuccessful bidder pursuant to ITB Clause 15”. (Emphasis supplied)

The Authority wishes to enlighten the Respondent that, the reason for notifying the unsuccessful tenderers of the tender results after the successful tenderer has submitted a performance security is to assure the procuring entity that, a successful tenderer has committed himself to execute the agreed contract. Thus,

in this case the notification which has already been issued to unsuccessful tenderers may force the Respondent to proceed with the said tenderer despite any defaults which might have been noted.

Furthermore, the Authority revisited the 1st Appellant submission that, the Invitation for RFP had specifically indicated that the award of the tender under Appeal will be made to two (2) providers of ground handling services. However, the said award has been made to one company only. The 1st Appellant finds the Respondent's act to have contravened the law as well as their own requirements.

The Respondent in reply submitted that, it was true that the Invitation for RFP indicated that the award would be made to two companies, but at the time the advertisement was issued to the public, the Respondent had already entered into contract with another service provider, namely, Swissport Handling Company who was obtained through single source method.

Based on the parties' arguments the Authority is of the view that, the Respondent ought to have notified the tenderers on the changes, that the award would not be made to two service providers as advertised. And if the said award to Swissport was made before the Invitation for RFP was issued to the public then the advertisement could specifically have indicated that the award would be made to one service provider.

Thus, the Respondent's failure to inform the tenderers that award would be made to one service provider raised legitimate expectation to tenderers who participated in the process, as they expected at least two of them to be awarded the contract. The Authority therefore, finds the Respondent's act to have prejudiced the tenderers position in competing for the said tender.

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

3.0 Whether the award to the Successful Tenderer was proper at law.

In resolving this issue, the Authority took cognizance of its findings in issue number two above, that the evaluation process was not conducted in accordance with the law. It goes without saying therefore that, the award to the successful tenderer was not proper at law.

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

Having analyzed the contentious issues in dispute, the Authority finds it prudent to consider prayers by parties.

To start with the Authority considered both Appellants' prayers that, a declaration be made that, the Respondent did not comply with the rules and regulations stipulated under the Act. With regards to this prayer, the Authority took cognizance of its findings in issue number one and two above that to a large extent the Respondent did not

adhere to the rules and regulations as stipulated in the Act. Therefore the Authority accepts this prayer and declares that the Respondent did not comply with the rules and regulations as specified in the Act.

The Authority also considered the 1st and 2nd Appellant's prayers that, the award decision be nullified and orders the tender process be re-started afresh. Having established that the Respondent's tender process did not comply with the law, and therefore a nullity in the eyes of the law, the Authority finds that, there is nothing to annul.

The Authority considered the Appellants prayers for compensation of general, specific and punitive damages to the tune of Tshs. 60,000,000/- for the 1st Appellant and Tshs. 50,000,000/- to the 2nd Appellant respectively and finds that, the same cannot be granted for want of jurisdiction.

The Authority also considered both Appellants prayers that, the Respondent be ordered to compensate the

Appellants costs related to tender preparation and Appeal costs. With regard to this prayer the Authority is of the view that the appeal has merit and the Appellants are entitled to compensation for some of the costs incurred. Accordingly, the Authority orders the Respondent to compensate both Appellants the sum of **Tshs. 7,240,000/-** as per the following breakdown;

a) The 1st Appellant

- Appeal fees Tshs. 120,000/-
- Legal fees Tshs.3,500,000

b) The 2nd Appellant

- Appeal fees Tshs. 120,000/-
- Legal fees Tshs 3,500,000/-

TOTAL Tshs. 7,240,000/-

With regard to the Respondent's prayer that the Appeal be dismissed in its entirety with costs, the Authority rejects it as the Appeal has merit.

Other matters that caught the attention of the Authority:

In course of handling this Appeal the Authority came across some pertinent matters which are worth mentioning as itemized below:

- a) The Evaluation Report indicates that the recommendation of award was made to M/s Aviation Handling Services AHS for a "**Fuel Concession Agreement for Provision of Ground Handling Services**". The Respondent conceded during the hearing that, it was a typographical error as the award was related to Provision of Ground Handling Services. The Authority is of the view that members of Procurement Management Unit ought to have noted such an error and rectified the same before such a Report is sent to Tender Board for approval.

- b) The Authority noted with concern the Respondent's act of awarding the contract to

Swissport through Single Source as it is contrary to Regulation 69 of GN No.97/2005 as it shows that the issue of exclusivity to Swissport was intended to be maintained. PPRA is requested to take note of this anomaly and take remedial action.

- c) The Authority doubts the competence of the members of the Procurement Management Unit due to several shortfalls noted in the tender process as a whole.
- d) The Authority also doubts the competence of Evaluators due to several shortfalls noted in the Evaluation Report.
- e) The Authority noted with concern the Respondent's attitude of submitting before this Authority contradictory information from their statement of replies, as at first they had admitted the tender under appeal to be a PPP and then later on in their amended Statement of Reply denied the tender to be a PPP. The Authority also noted some contradictory

information during the hearing from the Respondent's representative who appeared before this Authority.

Having considered all the facts and evidence, the Authority concludes that, the tender process did not adhere to the requirements of the law. It is the expectation of the Authority that the procedural flaws noted on the Respondent's side will be taken as lesson and efforts to rectify the pointed out anomalies will be made in future tender processes.

On the basis of the aforesaid findings, the Authority **upholds the Appeal** and orders the Respondent to:

- **Re-start the tender process in observance of the law**
- **Compensate the 1st and the 2nd Appellants a sum of Tshs. 7,240,000/-**

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

Decision delivered in the presence of the 1st and 2nd Appellants and the Respondent this 20th January, 2011.



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

CHAIRPERSON

MEMBERS:

1. HON. V.K. MWAMBALASWA(MP)



2. MRS. N.S.N INYANGETE

