

**IN THE
PUBLIC PROCUREMENT APPEALS AUTHORITY**

APPEAL CASE NO. 99 OF 2011

BETWEEN

**M/S MAPAKI GENERAL
ENTERPRISE CO. LTD 1ST APPELLANT**

**M/S PRINCE GENERAL
INVESTMENTS CO.LTD.....2nd APPELLANT**

M/S SYSCON BUILDERS CO.LTD.....3rd APPELLANT

AND

MAFIA DISTRICT COUNCIL.....RESPONDENT

DECISION

CORAM:

- | | | |
|----|-----------------------------|---------------|
| 1. | Hon. A.G. Bubeshi, J. (rtd) | - Chairperson |
| 2. | Mr. F.T. Marmo | - Member |
| 3. | Mr. H.S. Madoffe | - Member |
| 4. | Mrs. R.A. Lulabuka | - Member |
| 5. | Mr. K.M. Msita | - Member |
| 6. | Mrs. N.S.N. Nyerere | - Member |
| 7. | Ms. E.J. Manyesha | - Member |
| 8. | Ms. B.G. Malambuigi | - Secretary |

SECRETARIAT:

1. Ms. E.V.A. Nyagawa -Principal Legal Officer
2. Mr. R. R. Chisumo - Legal Officer

FOR THE 1ST APPELLANT:

1. Mr. Patrick R. Kiting'ati – Managing Director
2. Mr. Ibrahim J. Laizer – Operations Manager
3. Mr. George Nyangusu – Legal Counsel

FOR THE 2nd APPELLANT:

1. Mr. F. Msanjo – Managing Director
2. Mr. C. Mtete – Finance Manager

FOR THE 3rd APPELLANT:

1. Mr. Isaac Nyagabona – Managing Director

FOR THE RESPONDENT

1. Mr. William Z. Shimwela – District Executive Director
2. Mr. Masoud Idrissa – Supplies Officer
3. Simon Wendita – Legal Officer

This decision was scheduled for delivery today 2nd June, 2011, and we proceed to deliver it

The Appeal at hand was lodged by **MAPAKI GENERAL ENTERPRISES CO. LTD** (hereinafter to be referred to as "**the 1st Appellant**") against **MAFIA DISTRICT COUNCIL** (hereinafter to be referred to as "**the Respondent**"). Following notification of the Appeal by this Authority two other tenderers namely; **M/S PRINCE GENERAL INVESTMENTS CO. LTD** and **M/S SYSCON BUILDERS CO. LTD** (hereinafter to be referred to as the **2ndAppellant** and **3rd Appellant** respectively) opted to join in the appeal proceedings and submitted their statements.

The said Appeal is in respect of Tender No. MDC/CTB/CB/2010-2011/2 for Construction of Hostel, Dining and Kitchen at Micheni Secondary School (hereinafter to be referred to as "**the Tender**").

According to the documents submitted to the Authority, the facts of the Appeal may be summarized as follows:

During the 2009/2010 Financial Year, the Respondent invited tenders for the Construction of Hostel, Kitchen and Dining Hall at Micheni Secondary School *vide* Mwananchi newspaper dated 23rd February, 2010. (hereinafter to be referred to as **“the 1st Tender”**).

The tender Opening took place on 22nd March, 2010, whereby eight tenders were received as listed herein below:

	NAME OF TENDERER	TENDER PRICE (TSHS)
1.	M/s Farm Equipment (Tanzania) Co. Ltd.	550,962,000/=
2.	M/s Alpha Logistics Tanzania Ltd	377,558,400/=
3.	M/s Corporation Sole (Works Superintendent)	363,112,904/=
4.	M/s Sepro Engineering and General Traders Ltd.	304,313,500/=
5.	M/s Masasi Construction Co.Ltd	374,466,000/=
6.	M/s Landmark International Ltd	331,419,100/=
7.	M/s Haba Construction Co. Ltd	242,315,400/=
8.	M/s New Century Construction Co. Ltd	296,941,000/=

The tenders were subjected to evaluation whereby all the tenders were found to have quoted prices which were over and above the Engineer's Estimates and budget. The Evaluators therefore recommended that the tender should not be awarded to any tenderer.

On 9th June, 2010, the Tender Board met and deliberated on the delay in the execution of the project and reached the decision to select three tenders which had lower prices than the others. The tenders chosen were those submitted by M/s Haba Construction Co. Ltd, M/s New Century Construction Co. Ltd and M/s Landmark International Co. Ltd. Thereafter, the Tender Board awarded the tender to M/s New Century Construction Co. Ltd (hereinafter to be referred to as the "**Successful Tenderer**").

On 16th June, 2010, negotiations between the Respondent and M/s New Century Construction Co. Ltd were held whereby two issues were deliberated upon and agreed indicated herein below:

- Reduction of the tender sum from the original tender sum of Tshs. 296,941,000/= to Tshs. 223,081,000/=.
- The project to exclude furniture valued at Tshs. 59,360,000/= and electrical installation for Hostel and Dining valued at Tshs. 14,500,000/=.

On 14th July, 2010, the notification of award was communicated to the Successful Tenderer, *vide* letter referenced MDC/UJ/BLD/24/VOL. Contract signing did not take place on 2nd August, 2010 as scheduled due to delay in receiving funds for the project. The funds for the said project were disbursed towards the end of the 2009/2010 Financial Year and the Successful Tenderer was invited contract signing. However, the said contract was not signed due to what the Respondent termed as changes in the membership of the Tender Board, which made it difficult to obtain a quorum.

On 20th December, 2010, a decision was made by the Tender Board to re-advertise the tender after identifying anomalies in the contract.

On 9th January, 2011, the Respondent advertised the same tender *vide* Tanzania Daima newspaper (hereinafter to be referred to as "**the 2nd Tender**") which was subdivided into two lots namely;

- Lot 1 - Construction of Hostel; and
- Lot 2 - Construction of Dining Hall and Kitchen.

Tender opening for the 2nd Tender took place on 7th February, 2011; whereby, nine tenderers submitted tenders as follows:

S/ No	Name of a tenderer	Completion Period	Price offered (Tshs)
1.	M/s Posh Alliance Limited	18 weeks	324,402,200/=
2.	M/s Prince General Investment Ltd	20 weeks	299,661,660/=
3.	M/s Syscon Builders Ltd	10 months	330,249,600/=
4.	M/s Mapaki General Enterprises Co. Ltd	Not indicated	247,737,690/=
5.	M/s NAJ Builders Ltd	Not indicated	327,480,150/=
6.	M/s JHS Enterprises	Not indicated	362,997,026/=
7.	M/s Dipa & Associates Investment Joint Venture	Not indicated	249,995,905/=
8.	M/s Send Star Co. Ltd	7 months	373,650,470/=
9.	M/s Panga Concrete Works	25 months	248,648,540/=

On becoming aware that the 1st Tender that was awarded to them had been re-advertised, the Successful Tenderer was aggrieved and submitted the matter for administrative review to the Public Procurement Regulatory Authority (hereinafter to be referred to as "**PPRA**").

PPRA requested for documents pertaining to the 1st Tender from the Respondent whereby they availed as requested. In submitting the said documents, the Respondent informed PPRA that the Tender Board

had reviewed the award decision six months after award due to the following reasons:

- contravention of the procedures relating to negotiations by the Tender Board;
- overlapping of functions between the Accounting Officer and the Tender Board;
- members of the Tender Board taking part in the contract negotiation; and
- lack of quorum in Tender Board meetings.

Having reviewed the matter, on 1st March, 2011, PPRA *vide* letter referenced PPRA/LGA/008/16 wrote to the Respondent advising them, *inter alia*, to study the tender process carefully taking into account the shortfalls pointed out by them before reaching a decision.

On the same date, the Appellant made a phone call to the Respondent inquiring on the outcome of the 2nd Tender but was informed that the tender had already been awarded but the name of the successful tenderer was not disclosed to them. They

later learnt that the tenderer who was awarded the tender did not take part in the 2nd tender.

The Tender Board met on 4th March, 2011, and deliberated upon, among other things, the advice given by PPRA relating to the award of the 1st Tender. The Tender Board was informed that, the Respondent's Accounting Officer had directed that the award be made to the Successful Tenderer at a contract sum of Tshs. 223,081,000/= in implementation of PPRA's advice.

On 7th March, 2011, the Appellant being aggrieved by the Respondent's decision to award the tender to a tenderer whose name was not amongst read out during the opening of the 2nd Tender lodged their Appeal to the Public Procurement Appeals Authority (hereinafter to be referred to as "**the Authority**").

The Tender Board, in compliance with PPRA's directive, resolved that the Successful Tenderer be invited for contract signing. Indeed on 8th March, 2011, the Respondent wrote a letter referenced

MDC/C.60/13/VOL.II/178 inviting the Successful Tenderer for signing of the contract which was scheduled for 16th March, 2011.

SUBMISSIONS BY THE 1st APPELLANT

The 2nd Appellant's arguments as deduced from documentary, oral submissions as well as responses from questions raised by the Members of the Authority during the hearing were as follows:

That, the 1st Appellant was among the nine tenderers who accepted the invitation to tender.

That, the 1st Appellant wrote a letter to the Respondent seeking to be informed of who had been awarded the contract and the reasons for their failure to win the tender.

That, on 5th April, 2011, the 1st Appellant received a letter dated 28th March, 2011, from the Respondent informing them that the 2nd Tender had been nullified by virtue of the powers vested on the

Accounting Officer under Section 33(f) of the Act and Regulation 20(2)(d) of the Public Procurement (Goods, works, Non Consultant Services and Disposal of Public Assets by Tender) Regulations of 2005 (hereinafter to be referred to as "**GN. No. 97/2005**").

That, the Respondent's letter to the 1st Appellant was unsatisfactory as it did not disclose the tender results. Moreover, the 2nd Tender was awarded to a contractor who did not take part in the tender process.

Finally, the 1st Appellant requested the intervention of the Authority and suspension of the procurement process pending determination of the Appeal. They also prayed to be compensated a total of **Tshs. 5,343,440/=** as per the following breakdown:

DESCRIPTION	COSTS INCURED (TSHS)
Purchase of Tender Document	100,000/=
Return air ticket for David Minja	406,000/=
Allowance for Mr. David Minja	150,000/=
Allowance for the above Engineers	200,000/=
Director's allowance	300,000/=
Return air ticket for Site Engineer Denis Emid	406,000/=
Return ticket for Site Director Mr. Mapaki	406,000/=
Return air ticket for Quantity Surveyor Innocent P. Masha	406,000/=
Quantity Surveyor's allowance	200,000/=
Tender preparation	170,000/=
Legal fee	2,470,000/=
Appeal fees	120,000/=
Postage to Mafia	9440/=
Total	5,343,440/=

SUBMISSIONS BY THE 2ND APPELLANT

The 2nd Appellant's arguments as deduced from documentary, oral submissions as well as responses from questions raised by the Members of the Authority during the hearing were as follows:

That, the 2nd Appellant was among the tenderers who took part in the 2nd Tender and submitted their tender on 7th February, 2011.

That, the Respondent has never notified them about the outcome of the said tender.

That, the 2nd Appellant became aware of the tender outcome on 19th May, 2011, when they received a letter from the Authority notifying them of this Appeal.

That, the nullification letter was not communicated to them.

The 2nd Appellant therefore prayed that the Respondent be ordered to compensate them for costs incurred in the tender process as per the following breakdown:

DESCRIPTION	COST INCURRED (TSHS)
Air tickets for Director and Engineer (site visit)	406,000/=
Air tickets for Director and Quantity Surveyor (2 nd Trip)	360,000/=
Tax charges for Director and Engineer – to DSM airport/mafia/Dar return for two trips	150,000/=
Allowance for the above Engineers	200,000/=
Subsistence allowance for Director (two trips)-4 days@75,000	300,000/=
Subsistence allowance for Engineer and Quantity Surveyor-4 days @50,000	400,000/=
Tender preparation- secretarial and printing costs	155,000/=
Legal costs	2,600,000/=
Tender purchase fee	100,000/=
PPAA Appeal fees	100,000/=
Total	4,571,000/=

SUBMISSIONS BY THE 3rd APPELLANT

The 3rd Appellant's arguments as deduced from documentary, oral submissions as well as responses from questions raised by the Members of the Authority during the hearing were as follows:

That, they were among the tenderers who took part in the 2nd Tender.

That, the Respondent has never notified them of the outcome of the said tender.

That, the 3rd Appellant became aware that the Respondent had awarded **“the tender”** to a tenderer who did not participate in the tender process when he received notification of the Appeal by this Authority.

That, they believe that the Respondent contravened the law in awarding the tender to a tenderer who did not participate in the Tender process.

They therefore prayed that the Authority order the Respondent to compensate them for costs incurred in participating in the 2nd Tender as follows:

DESCRIPTION	COSTS INCURED (TSHS)
Return air ticket (6 Trips	480,000/=
Return air ticket for tender document purchase	172,000/=
Purchase of tender document	100,000/=
Per diem	500,000/=
Return ticket for site visit	172,000/=
Tender preparation costs	1,200,000/=
Return ticket for submission of tender document	172,000/=
Legal fees	1,800,000/=
Appeal fees	100,000/=
Miscellaneous costs	450,000/=
Total	5,066,500/=

REPLIES BY THE RESPONDENT

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

That, they advertised the 1st Tender whereby seven tenderers responded to the invitation but none of the three Appellants participated in that tender.

That, the tenders were evaluated and all of them were found to exceed the budget allocated for the project.

That, on 9th June, 2010, the Tender Board selected three contractors, namely, M/s Haba Construction Co. Ltd, M/s New Century Construction Co. Ltd and M/s Landmark International who had submitted tenders with lower prices than the others. Having reviewed the said tenders, the Tender Board resolved that the tender be awarded to M/s New Century Construction Co. Ltd (hereinafter to be referred to as the "**Successful Tenderer**")

That, on 16th June, 2010, they invited M/s New Century Construction Co. Ltd for negotiations but did not proceed with contract execution due to lack of funds for the Project.

That, the funds were availed towards the end of the 2009/2010 Financial Year but following the change in the Tender Board membership, contract execution did not commence. However, when the Tender Board

was re-constituted they wrongly advertised the 2nd Tender ignoring the award that was already made in the 1st Tender.

That, following the re-advertisement, M/s New Century Construction Co. Ltd submitted their complaint to PPRA who advised the Respondent that there was a binding contract between them since the said contract had neither been terminated nor suspended. PPRA thus advised them to make a careful analysis of the situation before reaching a final decision.

That, it was true that the three Appellants had participated in the 2nd Tender which had been erroneously advertised on 9th January, 2011; that tender process was subsequently annulled following advice from PPRA.

That, in the implementation of PPRA's advice, the Respondent invited M/s New Century Construction Co. Ltd for contract signing on 16th March, 2011.

That the tenders for the 2nd Tender were evaluated but the decision thereof had not been made since the Respondent had to implement PPRA's advice relating to the 1st Tender.

That, the Respondent apologizes to all tenderers who took part in the 2nd Tender for the inconveniences caused.

ANALYSIS BY THE AUTHORITY

According to the facts of this Appeal, the procurement of the contractor for the Construction of Hostel, Dining Hall and Kitchen at Micheni Secondary School was subjected to two different tender processes. The 1st Tender was advertised on 23rd February, 2010, while the 2nd Tender was advertised on 9th January, 2011. The Successful Tenderer was awarded the contract on the basis of the 1st Tender process which the three Appellants did not participate but had participated in the 2nd Tender. Since the two tender processes involved the same subject matter, the Authority's analysis will address

both of them in its endeavour to ascertain if they were conducted in observance with the law.

Having gone through the documents submitted and having heard the oral arguments from parties, the Authority is of the view that, the Appeal is based on the following issues:

- (a) Whether the tender process pertaining to the 1st Tender and the subsequent award to M/s New Century Construction Co. Ltd. was proper at law**
- (b) Whether the invitation of the 2nd tender was proper at law**
- (c) To what reliefs, if any, are the Appellants entitled to.**

Having identified the issues in dispute, the Authority proceeded to resolve them as follows:

1. Whether the tender process pertaining to the 1st Tender and the subsequent award to M/s New Century Construction Co. Ltd. was proper at law

The Authority observes that, for any procurement process to be lawful it has to satisfy all legal requirements provided for under the Act. In analyzing this issue the Authority considered oral arguments, written submissions and filed documents from both parties *vis-à-vis* the Tender Document and the applicable law.

To start with, the Authority reviewed the Tender Document for the 1st Tender in order to ascertain whether it complied with the requirements of Section 63(2) of the Act which provides as follows:

“The tender documents 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 and works to be provided.”
(Emphasis supplied)

The Authority detected the following shortfalls in the Tender Document for the 1st Tender:

- The name of the project as per Item 2 of the Bid Data Sheet is **“Construction of Hostel, Kitchen and Dinning (sic) Hall at Micheni Secondary School”** while Item 25 of the Bid Data Sheet refers to the project name as **“Excavation, Concrete works, Block works, Roofing and finishing works.”**
- Under Item 11 of the Bid Data Sheet, the period within which the Respondent was supposed to respond to tenderers’ requests for clarification was stated to be seven days. The Authority observes that, this provision contravened Regulation 85(3) of GN. No. 97/2005 which requires the clarification to be made within three working days. The said Regulation provides as follows:

“The procuring entity **shall respond within three working days of receipt of the query** so as to enable the supplier, service provider, contractor or asset buyer to take into account the clarification received in the preparation of its tender ...” (Emphasis added)

- Item 16 of the Bid Data Sheet indicated that tenderers were at liberty to submit either a Bid Security or a Bid Securing Declaration. The said Item reads as follows:

“The amount of Bid Security shall be (15% of the bid amount) or Tshs. or a Bid Securing Declaration” (Emphasis added)

The Authority noted that, Item 7 of the tender advertisement indicated that the tenders must be accompanied by a Bid Securing Declaration. The Authority observes that, the Bid Data Sheet should have specified which of the two securities were the tenderers obliged to submit.

- Item 13(c) of the Bid Data Sheet is also not very clear as it provides as follows:

“Experience as prime contractor in the construction of at least one project of a nature and complexity **equivalent to the Works the last 2 years or the period stated in a)** above (to comply with this requirement, works cited should be at least 70 percent complete).”

The Authority noted further that, item (a) of the said Item 13 did not provide for any duration.

- Item 23 of the Bid Data Sheet is ambiguous and incomplete as it relates to submission of a Power of Attorney. The said provision states as follows:

“Written confirmation of authorization are [list] [Normally power of attorney is provided]” (Emphasis added)

- Item 29 of the Bid Data Sheet is also confusing as it states as follows:

“(a) Domestic preference to apply or Domestic preference not applicable.

(b) If margin of preference applies, the application methodology shall be

.....

[Delete the non-applicable option]”

(Emphasis added)

In view of the foregoing, the Authority observes that, despite the shortfalls pointed out above, the Tender Document, to some extent, met the requirements of the law.

Having reviewed the Tender Document, the Authority examined the evaluation process in its entirety to establish whether procedural requirements were adhered to. To start with, the Authority revisited the Respondent’s admission during the hearing that, the Members of the Evaluation Committee did not sign Personal Covenants but they signed the Evaluation Report. The Authority wishes to enlighten the Respondent that, the Evaluators were obliged to sign

Personal Covenants prior to conducting the evaluation pursuant to Section 37(6) of the Act which states as follows:

"S.37(6) All members of the evaluation Committee shall sign the Code of Ethics provided under the regulation made under the Act, declaring that they do not have a conflict of interest in the procurement requirement." (Emphasis supplied)

The Authority emphasizes that, this requirement is not optional but mandatory. Hence, failure to sign Personal Covenants was a breach of the law.

According to the Tender Document, the evaluation was supposed to be conducted in three stages, namely, Preliminary Evaluation, Correction of Errors and Post-qualification. To start with, the Authority revisited Section 37(7) of the Act and Regulation 90(4) of GN. No. 97/2005 which guide on the manner in which the evaluation should be carried out in the following words:

“S. 37(7) The meetings of the evaluation committee, the conduct of the evaluation methodologies shall be executed in accordance with the regulations, guidelines and tendering documents under this Act.

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

According to the above quoted provisions, the Evaluation process was supposed to adhere to the Tender Document, Regulations as well as Guidelines issued by PPRA. The Authority revisited the Tender Document, particularly the provision that guides on the manner the Preliminary Evaluation was supposed to be conducted. Clause 28.1 of the ITB, which is in *pari materia* with Regulation 90(6) of GN. No. 97/2005, provides for items which were supposed to

be checked by the Evaluators at the preliminary stage. The said Clause states as follows:

“Prior to the detailed evaluation of bids, the Procuring Entity will determine whether each bid

(a) meets the eligibility criteria defined in ITB Clause 3;

(b) has been properly signed;

(c) is accompanied by the required securities; and

is substantially responsive to the requirements of the bidding documents.” Emphasis added)

The Authority observes that, Regulation 90(4) above quoted, requires the evaluation to be conducted in accordance with the criteria contained in the tender document. According to the Tender Document issued by the Respondent, the criteria provided for under Item 13 of the Bid Data Sheet requires provision of documents or information on the following:

- Legal status and Power of Attorney;

- Minimum annual volume of construction work of Tshs. 100,000,000/= in any of the last two years;
- Experience as a prime contractor in one project of a similar nature and complexity;
- Availability of essential equipment;
- A site Manager with five years in works of equivalent nature and volume;
- Evidence of adequate capital for this contract; and
- Information regarding current litigation.

The Authority noted that, criteria employed by the Evaluators at the Preliminary Stage, as they appear on page 1 and 2 of the Evaluation Report with the scores to be apportioned thereto are as reproduced in the Table below:

Criterion	Scores
Properly sealed	15
Properly signed	15
A duly completed and signed priced offer as per the Bill of Quantities (BoQ)	15
A valid Business License (Business permit to do Construction Works)	20
A valid VAT of recent performed contracts of similar nature including the names and address of the Employers for verification (sic)	20
List of technical personnel	15

Based on the above Table, the Authority observes that, it was wrong for the Evaluators to apportion scores as; firstly, they were not applicable to this type of tender and secondly, even where scores are applicable they should be contained in the tender document which was not the case for this tender.

The Authority noted that, after listing the Preliminary Evaluation criteria, the Evaluation Report does not show how the said criteria were evaluated. Moreover, the subsequent parts of the Evaluation Report contains Tables with mixed criteria for both Preliminary Evaluation and correction of errors, that

one cannot comprehend as to which evaluation stage preceded the other. In view of the glaring inconsistencies and anomalies in the content thereof, the Authority deems it prudent to point out the shortfalls detected in the evaluation process in their entirety as hereunder:

- (i) Table 1 indicates that, in checking completeness of tenders, the Evaluators used some criteria which were alien to the tenderers as they were not contained in the Tender Document. For purposes of recapitulation, the Authority reproduces the said Table which contains the criteria as well as the scores apportioned thereof:

Name of tenderer	Eligibility	Properly signed	Work experience	Covering letter	Cleannes s tender	Bank State ment	Total
M/S FARM EQUIPMENT (TANZANIA) CO. LTD	10	7	25	15	20	15	92
M/S ALPHA LOGISTICS TZ LTD	10	8	20	15	16	15	84
M/S CORPORATIO N SOLE (WORK SUPERINTEND ENT)	10	10	20	15	15	15	85
M/R SEPRO ENGINEEERIN G AND GENERAL TRADERS LTD.	10	12	20	15	15	15	87
M/S MASASI CONSTRUCTI ON CO. LTD	10	8	25	15	15	15	88
M/S LANDMARK INTERNATION AL LTD	10	6	20	15	10	15	76
M/S HABA CONSTRUCTI ON CO. LTD	10	10	16	15	12	15	78
M/S NEW CENTURY CONSTRUCTI ON CO. LTD	10	10	18	15	15	15	83
POINTS	10	15	25	15	20	15	100

Based on the above Table, the Authority observes that, '**covering letter**' and '**cleanness of tender**' were new and weird criteria. Having failed to comprehend what was checked under such criteria, during the hearing the Members of the Authority requested the Respondent to provide clarification. In reply thereof, the Respondent stated that, points awarded for cleanness of tender were given by looking at, for instance, how the BoQ's were filled without alterations or cancellations. The Authority is of the view that, by adding new criteria the Evaluators contravened the law as such conduct is also prohibited under Guideline 8.2 of Tender Evaluation Guidelines Procurement of Works or Goods issued by PPRA in February, 2007, which states as follows:

"Use of criteria other than those specified in the tendering documents is strictly prohibited."

(Emphasis added)

The above Table also indicates that, a score of 15 points was allocated for what was termed as **'properly signed'** tender. However, none of the tenders scored the total points of 15, as their scores ranged from 6 to 12, which means none of them met this requirement fully. During the hearing the Respondent was requested to explain what shortfalls were detected in the documents submitted by the tenderers which made the tenders to score different marks. The Respondent could neither provide satisfactory answers nor explain the distinction between a properly signed tender and that which was considered to be not properly signed.

(ii) Table 2 of the Evaluation Report contained ambiguous criteria such as, **'arithmetic check'**, **'submission of two copies'** and **'site visit attendance'**. The Authority observes that, despite the fact that the said criteria were contained in the Tender Document, it is also not clear what they intended to measure and at what stage these criteria were evaluated since they related to the period before the deadline for

submission of tenders up to the time of evaluation when correction of errors were being made. For purposes of clarity, the Authority reproduces the said Table hereunder:

Name of tenderer	Technical Personnel	Arithmetic Check	Receipt – H/W	Submission of 2 copies	Site visit attendance	Form of tender	Power of attorney	Equipment
FARM EQUIPMENT (TANZANIA) CO. LTD	15	15	10	15	0	15	15	10
ALPHA LOGISTICS TZ LTD	15	10	10	15	0	15	15	10
CORPORATION SOLE (WORK SUPERINTENDENT)	15	15	10	15	0	15	15	10
SEPRO ENGINEERING AND GENERAL TRADERS LTD.	15	15	10	15	0	15	15	10
MASASI CONSTRUCTION CO. LTD	15	15	10	15	0	15	15	10
LANDMARK INTERNATIONAL LTD	15	15	10	15	0	15	15	7
HABA CONSTRUCTION CO. LTD	15	15	10	15	0	15	15	9
NEW CENTURY	15	15	10	15	0	15	15	8

CONSTRUCTION CO. LTD								
POINTS	15	15	10	15	5	15	15	10

The Authority observes that, the criterion on attendance to Pre-bid meeting was assigned a weight of 5 points and all the tenders were given scores of 0. Furthermore, the Evaluation Report does not indicate that there were any price adjustments made during correction of errors. However, M/s Alpha Logistics (T) Ltd scored 10 marks out of the total of 15 marks assigned to the criterion.

During the hearing the Respondent was asked as to why M/s Haba Construction Co. Ltd whose tender had the lowest evaluated price was not awarded the tender, they replied that, the said tenderer's Site Manager was incompetent for lack of experience and technical expertise in construction. Upon being questioned further, if that was the case, why was their tender given 15 marks for technical personnel which included the Site Manager, the Respondent could not provide a satisfactory response.

(iii) The Authority noted that, the Evaluators combined Tables 1 and 2 as quoted above and came up with the ranking. However, the Authority could not comprehend the sub-title where the tenderer's total scores in the two Tables were indicated which read '**SILENT FEATURES**'. This shows clearly that, the Evaluators did not know what they were actually supposed to do.

(iv) The Authority further noted that, on page seven of the Evaluation Report titled "**TENDER RESULT**" (sic) the content thereof should have formed part of the introductory remarks. The said paragraph reads:

"During opening the tender (sic) we checked to see if they were properly sealed, thereafter the bidders name, tender price validity (sic), business licence, VAT and TIN, CRB etc, was announced and

recorded as shown on table 1,2 and table of combination (1&2)” (Emphasis supplied)

(v) The Evaluators’ recommendation was equally questionable, in the following aspects:

- They recommended that three tenderers had good qualifications, namely, M/s Felt Infrastructure Co. Ltd, M/s Masasi Construction Co. Ltd and M/s Sepro Engineering Co. Ltd but the tender should not be awarded to any tenderer as the prices quoted were higher compared to the Engineer’s estimates of Tshs. 224,421,200/= . The Authority discovered that, **M/s Felt Infrastructure Co. Ltd**, who was said to be amongst those qualified for the tender did not take part in the 1st tender.

- The Evaluators having recommended that the tender should not be awarded, further submitted that one of the tenderer’s was

prepared to execute the contract at a cost of Tshs. 111,419,100/= which was found to be unreasonable to the Evaluators. For purposes of clarity, the Authority reproduces the Evaluator's recommendation as it appears in the Evaluation Report:

“RECOMMENDATION:

- 1. From the view of evaluation we recommend that, FELT INFRASTRUCTURE CO. LTD, MASASI CONSTRUCTION CO. LTD AND SEPRO ENGINEERING CO. LTD have got good qualifications with the exception to their price observed which is very high compared to Engineer's estimate, So the tender evaluation team suggested that no one is to be awarded a chance for construction of Hostel, Kitchen and Dinning hall although; One bidder has tendered above the Engineer's estimate but he/she suddenly**

discount the amount by 111,419,100/= unreasonably which is very dangerous to award a chance.” (Emphasis added)

Based on the second bullet above, the Authority is surprised that, firstly, the Evaluation Report does not indicate the source of the information about the sudden change of the quoted price and how it was transmitted to the Evaluation Committee. Secondly, it is a clear indication that, the deliberations of the Evaluation Report were known to the tenderer who had offered to reduce their quoted price. Such conduct contravened Regulation 99(1) of GN. No. 97/2005 which provides as follows:

“Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of a contract shall not be disclosed to suppliers, service providers, contractors, asset buyers or any other person not involved officially in the examination, evaluation or comparison of

tenders or in the decision on which tender should be accepted.” (Emphasis added)

The Authority is of the considered view that, all in all, the evaluation process was not conducted in observance of the law.

Having pointed out the deficiencies in the evaluation process, the Authority reviewed the subsequent role of the PMU and the Tender Board that led to the award of the 1st Tender in order to satisfy itself whether the said award was made in accordance with the law. In so doing, the Authority revisited the minutes of the Tender Board, various communications made as well as written and oral submissions on this point, whereby the Authority's observations are made hereunder:

The documentary and oral submissions during the hearing did not indicate that the PMU reviewed the Evaluation Report before it was forwarded to the Tender Board. Had they done so, they would have detected the anomalies thereof and advised the

Tender Board accordingly.

In its meeting held on 1st April, 2010, the Tender Board deliberated on the Evaluation Report and rightly considered the budgetary constraints as the prices quoted by the tenderers were higher compared to the budgeted sum. The Authority noted that, the Tender Board's observations in that meeting, depicted diligence as they came up with three workable alternatives, to wit:

- Additional funds be requested to enable the execution of the project to take place as scheduled; **or**
- The scope of the project be reduced to meet the budgeted sum; **or**
- The project be executed in phases.

According to the documents availed to this Authority, the Tender Board settled for the second option, namely; reduction of the scope of the project. However, when the Tender Board met again on 9th June, 2010, in implementing the reduction in scope

of the project, they selected and deliberated on the tenders submitted by three tenderers whose prices were said to be not too high compared to the budgeted amount and subsequently awarded the tender to M/s New Century Construction Co. Ltd. The Authority is of the view that, the conduct of the Tender Board, in this regard, contravened the law in the following aspects:

- The act of selecting three tenders out of the seven evaluated is neither backed by the law nor contained in the Tender Document.

- Had the Tender Board selected three tenderers with lower prices, the choice would have included M/s Sepro Engineering and General Traders Ltd whose price of Tshs. 304,313,500/= was lower compared to Tshs. 331,419,100/= quoted by M/s Landmark International Ltd. This depicts unequal treatment of the tenderers and is contrary to Section 43(b) and (c) of the Act. Furthermore, M/s Sepro Engineering and General Traders Ltd ranked No. 3 in the

evaluation process as opposed to the three selected tenderers who had ranked Nos. 5, 7 and 8 respectively.

- Having received the Evaluation Report the Tender Board should have either approved or refused to approve the recommendation made by the Evaluation Committee pursuant to Section 68 of the Act which states as follows:

“S. 68. The tender board shall review the evaluation and recommendation made by the procuring entity and may either:-

(a) approve the recommendation and, authorize the procuring entity to accept the tender and award a contract in the forms specified in the tender documents;

(b) refuse to authorize acceptance of any of the tenders and refer the evaluation back to the procuring entity with an instruction to re-

evaluate the tenders or a recommendation for re-tendering or other action. ” (Emphasis supplied)

Relating the above quoted provision to the circumstances of this Appeal, the Authority observes that, the Evaluation Committee did not recommend for any award to be made and therefore there was nothing for the Tender Board to award. It is the firm view of the Authority that, it was wrong for the Tender Board to turn itself into an Evaluation Committee, re-evaluate the three tenders and subsequently award the tender to M/s New Century Construction Co. Ltd. on the basis of their own evaluation. Furthermore, even the basis of choosing the said tenderer amongst the three is not documented anywhere.

- The award of the tender to M/s New Century Construction Co. Ltd contravened Clause 35.1 of the ITB which requires the award to be made to the lowest evaluated tenderer; since the

Successful Tenderer was not the tenderer with the lowest evaluated tender. Hence, the purported award of the tender in favour of M/s New Century Construction Co. Ltd is a nullity in the eyes of the law.

- By directing the said tenderer to be invited for negotiation, the Tender Board contravened Clause 36.1 of the ITB read together with Regulation 95(6) of GN. No. 97/2005, which require negotiations to be undertaken with the lowest evaluated tenderer. The said Regulation states as follows:

“Negotiations shall only be held with the lowest evaluated tenderer for goods, services or works, or the highest evaluated tenderer for disposal of assets.” (Emphasis supplied)

- Furthermore, by conducting negotiations with the said tenderer, the Respondent contravened Regulation 95(4) of GN. No. 97/2005 which

prohibits negotiations to be carried out prior to the approval of the recommendations of the Evaluation Committee. In the 1st Tender, the Evaluation Committee had recommended that the tender should not be awarded to any tenderer. The said provision provides as follows:

“Negotiations with a tenderer are not permitted until after the tender board has approved the evaluation committee’s recommendations:” (Emphasis supplied)

The Authority revisited the Minutes of the Negotiation meeting held on 16th June, 2010, as well as the Minutes of the Tender Board meeting dated 9th November, 2010 and detected the following anomalies:

- (i) The Negotiation minutes indicate that the Successful Tenderer had been awarded the tender at a contract price of Tshs. 223,081,000/= instead of their quoted price of Tshs. 296,941,000/=. The said price

adjustment was due to the exclusion of provision of furniture worth Tshs. 59,360,000/= and electrical installation works at a cost of Tshs. 14,500,000/=. The Respondent termed this exclusion as a reduction of quantities. As stated earlier, the exclusion of supply of furniture or electrical installation works does not fall within the ambit of the 'reduction of quantities' envisaged under Clause 36.1(b) of the ITB which is in *pari materia* with Regulation 95(1)(b) of GN. No. 97/2005. The Authority observes that, the change of quantities would definitely affect the tenderer's price which is strictly prohibited under Regulation 95(2)(c) and (e) of GN. No. 97/2005.

- (ii) The Tender Board minutes of 9th November, 2010, indicated that, the Successful Tenderer was assigned to supply 32 beds valued at Tshs. 11,360,000/= and carry out electrical installations valued at Tshs.

11,000,000/= . In addition, while preparing the contract, the PMU made correction of errors in the said tenderer's price by adding Tshs. 348,000/= thereto hence increasing the total contract sum to be Tshs. 245,789,000/= .

The Authority observes that, the price adjustment made by the PMU was wrong as they do not have that mandate. With regard to the price increase made by the Tender Board, the Authority observes that, it was equally wrong as the award to the said tenderer was a nullity. Assuming that the award was proper, the Authority noted that, the amount stated in the letter of award and the signed contract between the parties was **Tshs. 223,081,000/=** and not **Tshs. 245,789,000/=** . During the hearing, the Respondent could not explain the rationale for their actions in this regard.

- (iii) According to the Negotiation Minutes, it was **“noted that the tenderer had experience in works of similar nature and has experienced technical personnel”**. It is further stated that **“the Tenderer explained that his firm is experienced with building works, is ready and capable of executing the work as per the contract agreement.”** The Authority wonders whether one’s experience and capability could be shown by verbal assurance as it is not indicated how the Members of the Negotiation Team satisfied themselves that the said tenderer had the required qualifications as it was directed by the Tender Board.

The Authority considered the Respondent’s defense that, the Tender Board’s actions that led to the award of the 1st Tender to the Successful Tenderer were done in exercise of the powers conferred to them under Section 32(d) of the Act. The said provision states as follows;

“S. 32(1) in the exercise of their powers under this Act, tender boards may;
(d) do all such acts and things as they may consider incidental or conducive to the attainment of their objects.” (Emphasis supplied)

The Authority is of the view that, the Respondent misconstrued the said provision as the phrase **“may do all such acts and things”** does not extend to acts which breach the law. The Authority therefore observes that, it was wrong for the Tender Board to breach the law with impunity.

In view of the foregoing, the Authority is of the settled view that, Evaluation Committee, the PMU and the Tender Board depicted a high level of incompetence and ignorance of the law.

Accordingly, the Authority concludes that the tender process pertaining to the 1st Tender and the

subsequent award to M/s New Century Construction Co. Ltd were not proper at law.

2. Whether the invitation of the 2nd Tender was proper at law

In resolving this issue the Authority deemed it necessary to start by considering the circumstances leading to the advertisement of the 2nd Tender. The Authority noted that, the Respondent has two versions of what triggered the advertisement of the 2nd Tender. On the one hand, during the hearing the Respondents submitted that, the advertisement of the 2nd Tender was erroneous as it was caused by the re-constitution of the Tender Board. The newly constituted Tender Board was not aware of the transactions pertaining to the 1st Tender, hence the advertisement of the 2nd Tender.

On the other hand, according to the Minutes of the Tender Board dated 20th December, 2010, the circumstances leading to the advertisement of the 2nd Tender were that:

- The Respondent's Executive Director assigned the Council Solicitor and the Engineer to review and ascertain the validity of the contract relating to the 1st tender, after the same had been raised by the Council Solicitor. They were further required to recommend as to whether or not the said contract should be signed.

- When the said Team requested for the documents relating to the said tender such as, the tender documents, Evaluation Report as well as the minutes of the Tender Board meeting which approved the award to the Successful Tenderer, such documents could not be traced at that time.

- The Council Solicitor informed the Executive Director, in writing, on the shortfalls thereof whereby the latter instructed the PMU to set proper criteria and advertise the said tender.

- The Tender Board therefore, resolved that owing to the anomalies detected the procurement process should start afresh.

The Authority is not convinced with the Respondent's oral submissions on this point, because their evidence was not corroborated by any written evidence and being a public body their decisions are expected to be in writing. Moreover, there is no indication that all the Members of the Tender Board as well as the secretariat were new and that there was no continuity in their proceedings.

The Authority finds the second version to be more plausible as the said minutes were duly signed by the Chairman and the Secretary of the Tender Board. The Authority therefore is satisfied that, the decision to advertise the 2nd Tender was triggered by the deficiencies detected in the 1st Tender and it was not done by mistake.

Having said that, the Authority examined the effects of the advertisement of the 2nd Tender which drew

the attention of the Successful Tenderer in the 1st Tender. It is not disputed that, having become aware that the tender for Construction of Hostel, Dining Hall and Kitchen at Micheni Secondary School was advertised again, the Successful Tenderer complained to PPRA. The Authority observes that, on the face of it, the said tenderer had the right to do so as the subject matter was the same as that which was already awarded to them way back on 14th July, 2010.

According to the documents availed to this Authority, upon receipt of the said complaint, PPRA requested the Respondent to submit documents pertaining to the 1st Tender and reviewed the matter. Since the Respondent submitted that, they nullified the process relating to the 2nd Tender and reverted to the award made to the Successful Tenderer in implementation of PPRA's directive, the Authority deems it necessary to summarize PPRA's observations which were communicated to the Respondent on 1st March, 2011 as hereunder:

- By virtue of Section 55(7) of the Act, a procurement contract between the Respondent and the Successful Tenderer entered into force on 14th July, 2010, when the letter of acceptance was communicated to the successful tenderer. PPRA inquired as to why the tender process started afresh while the contract was already in force.
- There was no documentary proof indicating that the 1st Tender was cancelled or the contract thereof was terminated or that the Successful Tenderer was informed on the reasons for termination of the contract or award.
- The lapse of eight months since the acceptance was communicated to the Successful Tenderer, may adversely affect the prices for building materials.
- The Respondent was advised to review the tender process in its entirety taking into

consideration the shortfalls pointed out by PPRA before making a decision.

The Authority does not agree with the Respondent's submission that, PPRA had advised them to continue with the awarded contract. The Authority's position is based on the last bullet above, which advised the Respondent to consider the shortfalls detected before making a decision. Moreover, PPRA raised some pertinent questions which the Respondent needed to address prior to making any decision.

The Authority also noted that, when PPRA requested for documents from the Respondent, the documents availed to them included the tenders submitted by the tenderers who took part in the 1st Tender, Evaluation Report as well as the minutes of the Tender Board meetings. The Authority does not comprehend why PPRA's letter did not mention the other material deficiencies detected in the evaluation process as well as the manner in which the award to the Successful Tenderer was made. Had they been

diligent they would have found that the award was improper and advised the Respondent accordingly.

As it has been established in the first issue that, the award of the 1st Tender was a nullity in the eyes of the law, the Authority is of the considered view the Respondent erred in continuing with the tender process pertaining to the 1st Tender after receiving PPRA's advice.

The Authority considered the invitation of the 2nd Tender and observes that, it was wrong for the Respondent to invite new tenders before concluding the process pertaining to the 1st Tender. According to the facts of this Appeal, it is evident that, at a certain stage the processes of the two tenders, on the same subject matter, were continuing simultaneously.

With regard to the Appellants' contention that the tender was awarded to a tenderer who did not take part in the tender process, the Authority observes

that, the confusion was caused by the two tender processes which involved the same subject matter.

In view of the above, the Authority concludes that the invitation of the 2nd Tender was not proper at law.

3. To what reliefs, if any, are the Appellants entitled to.

In resolving this issue the Authority took cognizance of its conclusions in the 1st and 2nd issues, and finds that the Appellants are entitled to some compensation for costs incurred as the invitation of the 2nd Tender was wrong. The Authority therefore orders the Respondent to compensate the Appellants a total sum of **Tshs. 6,960,440/=** being costs incurred in respect of the following:

1st Appellant:

DESCRIPTION	COSTS INCURED (TSHS)
Purchasing of the Tender Document	100,000/=
Return air ticket for David Minja	107,000/=
Allowance for Mr. David Minja	150,000/=
Return air ticket for site Engineer Denis Emid	107,000/=
Allowance for the Engineer	200,000/=
Return air ticket for Quantity Surveyor Innocent P. Moshia	107,000/=
Quantity Surveyor's allowance	200,000/=
Tender preparation	170,000/=
Legal fees	2,470,000/=
Appeal fees	120,000/=
Postage to Mafia	9,440/=
Total	3,740,440/=

2nd Appellant:

DESCRIPTION	COSTS INCURED (TSHS)
Air ticket Engineer (site visit)	107,000/=
Air ticket for the Quantity Surveyor	107,000/=
Taxi charges for the Engineer – to DSM airport/mafia/Dar return for two trips	75,000/=
Subsistence allowance for Engineer and Quantity Surveyor- 4 days @50,000	400,000/=
Tender preparation- secretarial and printing costs	155,000/=
Legal consultation fee	500,000/=
Tender purchase fee	100,000/=
PPAA Appeal fees	100,000/=
Total	1,544,000/=

3rd Appellant:

DESCRIPTION	COSTS INCURED (TSHS)
Return air ticket (3 trips)	321,000/=
Purchase of tender document	100,000/=
Per diem	500,000/=
Tender preparation costs	155,000/=
Legal consultation fee	500,000/=
PPAA Appeal fees	100,000/=
Total	1,676,000/=

Other matters that caught the attention of the Authority:

In addition to the shortfalls pointed out in this decision, the Authority detected the following anomalies which are pointed out herein below to enable the Respondent to take note of them and ensure that they do not recur in future:

- (a) Item 12 of the Bid Data Sheet limited all correspondence in the 1st Tender to be in English. The Authority is of the view that, this being tender confined to local tenderers, the leeway of using both Kiswahili and English

should have been provided as the law recognizes the two languages.

- (b) The Minutes of the Tender Board meetings contained a lot of typographical errors and were not detailed enough to enable the reader to understand how the decisions were made. Moreover, the confirmation of the minutes did not indicate which minutes were being confirmed as the dates thereof were not stated. It should be noted that, accurate and comprehensive minutes are a critical tool for record of decisions and legitimacy thereof by the appropriate tender organs.
- (c) The Evaluation Report dated 30th March, 2010, indicates that, the invitation was made by way of quotations while the tender advertisement invited tenders from eligible tenderers. Moreover, page 1 of the said Report states that the Preliminary Evaluation was conducted in accordance with **“Article 34 of the General Regulation for Works”**. The

Authority noted that, the said 'General Regulation for Works' is non-existent neither in the Tender Document nor in the Act. Moreover, Preliminary Evaluation was provided for under Clause 28 of the ITB.

The Authority also noted that, the Evaluation Report was written in English. On the face of the record, the Evaluators are not very conversant with the said language given the grammatical mistakes contained therein. The Authority emphasizes that, for tenders which involve local tenderers, it is not mandatory to use English language as it has already been pointed out.

- (d) The Minutes of the tender opening held on 22nd March, 2011, indicated that one of the items that were checked was "**Bid amount of the work**" where the prices quoted by the tenderers were shown. Further, the minutes of the tender opening dated 7th February, 2011, indicate that, the read out items were, the

name of the tenderer, quoted price and completion period. The Authority observes that, some of the shortfalls in the tender process could have been avoided had the Respondent used the Guidelines provided by PPRA which contain sample forms to be filled. Had they done that, they would have known which items were to be checked as per the Tender Opening Checklist.

Furthermore, the said minutes indicates that, in his closing remarks the Chairman of the Tender Board thanked the tenderers' representatives who attended the opening session. The Authority noted that, after the tender opening the Tender Board proceeded to deliberate on other agenda which did not concern the Tenderers. This means either the Tender Board deliberated the other agenda in the presence of the tenderers' representatives or the minutes were not recorded properly.

(e) The Minutes of the Tender Board dated 9th June, 2010, indicated that the Tender Board directed the PMU to communicate the tender results to both the successful tenderers as well as unsuccessful ones. The Authority observes that, this was not proper as the unsuccessful tenderers (save for those whose tenders were substantially non responsive) are supposed to be notified of the tender results after the successful tenderer has furnished the performance security. This is because, in the event the successful tenderer fails to do so within the required time or otherwise, the procuring entity has room to award the tender to the second lowest evaluated tender.

(f) On 9th June, 2010, the Tender Board approved the names of the members of the Negotiation Team as proposed by the PMU. However, the said Team consisted of three members, two of whom were Members of the Tender Board whereas the other one was the

Secretary of the Tender Board. The Authority observes that, this is contrary to Section 38 of the Act which provides for independence of functions and powers.

- (g) The Negotiation Minutes of 16th June, 2010, were not signed. This casts doubts as to their authenticity.
- (h) The contract signed between the Respondent and M/s New Century Construction Co. Ltd does not indicate the date when the said contract was made as it reads **“This Agreement made the day of March, 2011, ...”**.
- (i) The Respondent’s letter referenced MDC/C.60/13/VOLII/178 dated **8th March, 2010**, invited the Successful Tenderer for signing of the contract on **16th March, 2011**, that is, a year later?

- (j) The advertisement for the 2nd Tender indicated that the tender contained two Lots but the same was neither reflected in the ITB nor in the Bid Data Sheet.
- (k) The Tender Document for the 2nd Tender contained the following shortfalls:
- The name of the project as per Item 2 of the Bid Data Sheet is **“Construction of Dinning (sic) Hall and Kitchen at Micheni secondary school”** while Item 20 of the Bid Data Sheet refers to the project name as **“Construction of Hostel, Dining and Kitchen at Micheni Secondary School”**. The Authority noted that, the word **‘Hostel’** does not appear under Item 2 of the Bid Data Sheet.
 - Item 12(a) of the Bid Data Sheet is neither precise nor explicit as it combined distinct documents and information to be relayed. The said Item reads:

“Other information of materials (sic) required to be completed and submitted by Bidders:

- (a) Copies of original documents **defining the constitution of legal status, place of registration and principal, place of business:** written power of attorney authorizing the signatory of the bid to commit the Bidder.” (Emphasis supplied)

- (l) During the hearing the Respondent’s Supplies Officer while conceding to various procedural anomalies in the tender process, claimed that he was new to that work station and that now their performance has improved. The Authority observes that, the said Officer was involved in both the 1st and 2nd tenders as evidenced in the minutes of the Tender Board availed to this Authority. The Authority advises the Respondent to consider seriously the issue of capacity building, particularly in procurement, for their staff.

The Authority appreciated the physical presence of the District Executive Director at the hearing. This is an indication of commitment and seriousness on his part. The Authority believes that his attendance provided an opportunity to know the shortfalls detected in the procurement process and therefore expects that , the said anomalies will be rectified and that the lack of adequate knowledge of the applicable law which was evident during the hearing, will be addressed and given due weight .

Having considered all facts and evidence, the Authority concludes that, the tender process in its entirety was marred by irregularities, the award of the tender in favour of M/s New Century Construction Co. Ltd is a nullity and the invitation of the 2nd Tender was improper.

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

- **Re-start the tender process afresh in observance of the law.**

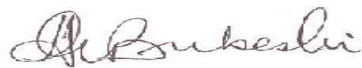
- **Compensate the three Appellants a sum of Tshs. Tshs. 6,960,440/= as per the following breakdown:**
 - (i) 1st Appellant – Tshs. 3,740,440/=**

 - (ii) 2nd Appellant – Tshs. 1,544,000/=**

 - (iii) 3rd Appellant – Tshs. 1,676,000/=.**



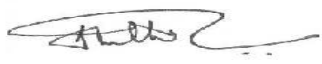


Right of Judicial Review as per Section 85 of the PPA/2004 explained to parties.

Decision delivered in the presence of the Appellant and the Respondent this 2nd June, 2011.



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

MEMBERS:

1. MR. F. T. MARMO.....
2. MR. H.S. MADOFFE.....
3. MR. K.M. MSITA.....
4. MRS. R.A. LULABUKA.....
5. MRS. N.S.N. INYANGETE.....
6. MS. E.J. MANYESHA.....