

IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY

APPEAL CASE NO. 49 OF 2022-23

BETWEEN

M/S MIDZENY COMPANY LTD.....APPELLANT

AND

OFISI YA MDHIBITI MKUU UBORA WA SHULE

WILAYA YA GAIRO.....RESPONDENT

DECISION

CORAM

1. Hon. Justice (rtd) Sauda Mjasiri - Chairperson
2. Ms. Ndeonika Mwaikambo - Member
3. Dr. William Kazungu - Member
4. Mr. James Sando - Secretary

SECRETARIAT

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

FOR THE APPELLANT

1. Ms. Salma Swavillah - Procurement Officer

FOR THE RESPONDENT

1. Ms. Tatu Samizi - District Chief School Quality Assurance
2. Mr. Angelus Kapinga - Legal Officer- Ministry of Education, Science and Technology
3. Mr. Lubumba Kasanga - Senior Quality Assurance Officer



4. Mr. Wilhelmo Kimaro - Senior Quality Assurance Officer
5. Mr. Suleiman Mfinanga - Supplies Officer - Ministry of Education, Science and Technology
6. Mr. Pius Msumba - University of Dar es Salaam- BICO
7. Mr. Ngassa Madatula - Senior Quality Assurance Officer

The Appeal was lodged by **M/S Midzeny Company Ltd** (hereinafter referred to as "**the Appellant**") against **Ofisi ya Mdhibiti Uhora wa Shule Wilaya ya Gairo** (hereinafter referred to as "**the Respondent**"). The Appeal is in respect of a Quotation for Supply of Local Materials for Construction of Vocational Training and Services Center at Gairo District in Morogoro Region using Force Account (hereinafter referred to as "**the Quotation**"). The Quotation has seven (7) Lots out of which the Appellant participated in Lots 2, 3, 5, 6 and 7.

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

On 19th April 2023, the Respondent through an advertisement posted on its office invited tenderers to participate in the Quotation. The deadline for submission of the quotation was on 2nd May 2023. On the deadline, fifteen quotations were received including that of the Appellant.

The received quotations were then subjected to evaluation and after completion; the Evaluation Committee recommended an award for Lot 1 to Alphonse A. Msale, Lot 3 to Magorombe Enterprises, Lot 4 to Adrian Peter Lyimo, Lot 5 to Friends Company Ltd and Lots 2, 6 and 7 to



M/S FK and CF Company. In addition, the Evaluation Committee also recommended that the firms be subjected to negotiations.

On 15th May 2023, the Respondent invited the proposed successful tenderers for negotiations which were scheduled on 22nd May 2023. The negotiations successfully took place as scheduled save for Lot 5 which the proposed successful tenderer did not enter appearance. On 22nd May 2023, the Respondent invited the second lowest evaluated tenderer for Lot 5, the Appellant, to attend the negotiations scheduled to take place on 23rd May 2023. During the negotiations, it was observed that, the Appellant did not quote prices for Item 33, 34, 35, 36 and 37 of the BOQ. At the end of the negotiations, the Appellant was required to submit the quoted prices for unfilled items on its BOQ.

On 23rd May 2023, the Appellant wrote a letter to the Respondent indicating that prices for items No. 10, 11, 12, 13 and 32 of the BOQ had been reduced from TZS 48,075,000.00 to TZS 47,050,000.00 VAT exclusive. The Appellant elaborated further that the reduced price, did not include the prices for Items No. 33, 34, 35, 36 and 37 of the BOQ. The Appellant indicated that there was a need of having negotiations regarding the Items of the BOQ whose prices were not indicated.

On 29th May 2023, the Respondent invited M/S FK and CF Company the third ranked tenderer for negotiations in respect of Lot 5. Negotiations successfully took place on the same date. Between 23rd and 30th May 2023, the Respondent issued award letters to the successful tenderers.

On 2nd June 2023, the Respondent informed the Appellant that its tender was disqualified for failure to fill prices of some of the items in the BOQ. The letter was served to the Appellant on 12th June 2023 via Whatsapp.



Dissatisfied with the issued awards, on 14th June 2023, the Appellant applied for administrative review to the Respondent. On 22nd June 2023, the Respondent rejected the Appellant's application for administrative review. This aggrieved the Appellant and on 26th June 2023 it filed this Appeal before the Appeals Authority.

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

- 1.0 Whether the Disqualification of the Appellant was proper in law;**
- 2.0 Whether the award of the quotations to the successful tenderers was justified; and**
- 3.0 What reliefs, if any, are the parties entitled to?**

SUBMISSIONS BY THE APPELLANT

The Appellant's submissions were made by Salma Swavillah, Procurement Officer from the Appellant's office. She commenced her submissions on the first issue by stating that, the Appellant's disqualification from the Quotation process was not proper, due to the Respondent's failure to comply with the requirements of Regulation 231(2) of the Regulations prior to the issuance of an award. According to the referred provision, the Respondent was required to issue the notice of intention to award prior to the issuance of award letters.

The Appellant submitted further that the Respondent's letter dated 2nd June 2023 which notified it of the reason for its quotation being unsuccessful, contravened the requirements of Regulation 231(4) (a) and (b) of the Regulations. The cited regulation requires an unsuccessful



tenderer to be notified the name of the successful tenderer, the awarded contract price and the completion or delivery period. The Respondent's letter dated 2nd June 2023 stated only the reason for its disqualification. Thus, the Respondent contravened the requirements of Regulation 231(4) (a) and (b) of the Regulations.

Regarding the reason given for its disqualification, the Appellant conceded not to have filled prices for Items No. 33, 34, 35, 36 and 37 of the BOQ. The Appellant submitted that much as the prices of the mentioned items of the BOQ were not filled, such an omission should not have resulted in its disqualification. The Appellant contended that the tenderer that was awarded Lot 1 did not quote prices for some of the items in the BOQ and yet the Respondent awarded the Quotation to it. Thus, the Appellant's disqualification on this ground was not proper.

On the second issue, the Appellant submitted that the Respondent had awarded the Quotations for Lot 2, 5, 6 and 7 to M/S FK and CF Company which did not participate in the Quotation process. The Appellant submitted that it attended the Quotations opening ceremony and was appointed to be one of the tenderers' representatives who verified the opening of the quotations. The Appellant denied to have verified the opening of the quotations submitted by M/S FK and CF Company. The Appellant also indicated that M/S FK and CF Company did not have any representative during the opening of the quotations. Thus, the firm did not participate in the disputed Quotation process.

The Appellant stated that since M/S FK and CF Company did not participate in the Quotation under Appeal, the Respondent ought not to have awarded the Quotations to it. The Appellant asserted that the

Handwritten signature and an arrow pointing to the right.

Respondent's act of awarding the Quotations to a tenderer who did not participate in the Quotation process contravened Regulations 203, 204, 205, 206 and 207 of the Regulations.

The Appellant submitted further that the Respondent awarded Lot 1 to Alphonse A. Msale while he failed to comply with criteria in Clause 1 (a), (b), (c), (d), (e), (f), (g) and (h) as provided in the Quotation Document. According to the Quotation Document, tenderers were required to attach copies of the documents as listed under Clause 1 (a) to (h) so as to establish their eligibility. The Appellant stated that, during the opening of the quotations, the eligibility criteria and quoted prices for each Lot were readout. The quotation of Alphonse A. Msale was found to have not complied with some of the eligibility criteria. Therefore, his quotation ought to have been disqualified during the evaluation process. To the contrary, the Respondent awarded Lot 1 to Alphonse A. Msale whereas he failed to comply with some of the requirements provided in the Quotation Document.

Regarding Lot 4 which was awarded to Adrian P. Lyimo, the Appellant submitted that the tenderer failed to comply with requirements provided under Clause 1 (a) to (h) of the Quotation Document. According to the Appellant, the tenderer failed to attach some of the documents which were mandatory and were to be attached with the quotation. The Appellant alleged that the anomaly on the quotation of the said tenderer was noted during the opening of the quotations and it was expected that the same would lead to the tenderer's disqualification at the evaluation stage. To the contrary, the Respondent qualified the firm and awarded him Lot 4.

6



Finally, the Appellant prayed for the following orders:-

- i. The Respondent's decision of awarding the Quotations to tenderers who have not complied with the requirements of the Quotation Document be nullified.
- ii. The Respondent be ordered to re-evaluate the quotations using an independent evaluation committee; and
- iii. The Respondent be ordered to pay costs of the Appeal.

SUBMISSIONS BY THE RESPONDENT

The Respondent's submissions were made by Ms. Tatu Samizi; District Chief School Quality Assurance from the Respondent's office. She commenced her submissions on the first issue by stating that, the Appellant was one of the tenderers which participated in the disputed Quotation process. During the opening of the quotations, the Appellant was appointed to be the tenderers' representatives for verification of the opening process. After the opening process was finalized, the received quotations were subjected to evaluation. After completion of the evaluation process, the Appellant's quotation was ranked to be the second lowest with respect to Lot 5 while the first lowest evaluated tenderer was M/S Friends Plan Company Ltd.

The Respondent submitted that after evaluation of all Lots was completed, it invited the lowest evaluated tenderers for each Lot for negotiations. The Respondent alleged that negotiations for all Lots were successful save for Lot 5 as M/S Friends Plan Company Ltd who was the lowest evaluated tenderer for this Lot never made appearance. The Respondent claimed to have invited the Appellant, the second lowest evaluated tenderer for Lot 5 for negotiations. During negotiations it was

Handwritten signature and a mark resembling a checkmark or a stylized '4'.

observed that, the Appellant did not quote prices for Items No. 33, 34, 35, 36 and 37 of the BOQ. The Appellant was given time to fill the unfilled items on its BOQ. However, the Appellant did not do so, instead it requested for further negotiations.

Having observed that the Appellant was not ready to fill in the BOQ, the Respondent invited M/S FK and CF Investment Company which was the third lowest evaluated tenderer for Lot 5 for negotiations. The Respondent contended that negotiations with M/S FK and CF Investment Company were successful. Thus, the firm was awarded the quotation for Lot 5.

The Respondent submitted that, the Appellant's quotation was disqualified for failure to indicate quoted prices on Items No. 33, 34, 35, 36 and 37 of the BOQ. The Appellant was accorded an opportunity to fill unquoted prices on its BOQ. However, it failed to do so. Thus, the Respondent had no other alternative than disqualifying the Appellant for failure to comply with the requirements of the BOQ. The Respondent therefore contended that the Appellant's disqualification is justified.

On the second issue, the Respondent disputed the Appellant's allegation that, M/S FK and CF Company did not participate in the Quotation process and therefore ought not to have been awarded the quotation. The Respondent submitted that M/S FK and CF Company participated in this Quotation. Its quotations were opened and readout during the opening of the quotations which took place on 2nd May 2023. M/S FK and CF Company participated in Lots 2, 5, 6 and 7.

The Respondent submitted further that Appendix 2 attached to the Appellant's Statement of Appeal which purports to be the readout record during the opening of quotations is not authentic. The quotation opening



records were signed by the Chairperson and the appointed tenderers' representative. However, Appendix 2 attached to the Appellant's Statement of Appeal, did not bear the signature of the Chairperson and the appointed tenderers' representative. Therefore, it is not a true record of what transpired during the opening of quotations. Hence, the Respondent urged the Appeals Authority to disregard Appendix 2 attached to the Appellant's Statement of Appeal.

The Respondent submitted that it conducted this Quotation process in accordance with the law. After the received quotations were opened the same were subjected to evaluation that was conducted fairly to all tenderers. The Respondent stated that due to the nature of the required supplies, on eligibility requirements tenderers were to comply with any of the five items out of eight that were provided. In that premises Alphonse A. Msale, a tenderer who has been awarded a quotation for Lot 1, his quotation was found to be responsive despite the fact that he did not attach a power of Attorney and registration certificate from Business Registration and Licensing Agency (BRELA). The said tenderer also complied with the BOQ requirements as he quoted prices for all items as required. Thus, he qualified for award of the quotation. In Addition, the Respondent submitted that the Appellant did not participate in Lot 1, thus it is not entitled to challenge the same.

In relation to the Appellant's argument that Adrian P. Lymo ought not to have been awarded Lot 4 as he failed to attach to the quotation some of the mandatory documents, the Respondent submitted that all the required documents establishing eligibility of a tenderer were attached. During evaluation Adrian P. Lymo was found to have complied with all the requirements of the Quotation Document and therefore he was

Three handwritten signatures in blue ink are located at the bottom of the page. The first signature on the left is a cursive 'A'. The middle signature is a cursive 'D'. The signature on the right is a cursive 'P'.

awarded Lot 4. Thus, the Appellant's argument on this point is unfounded.

The Respondent stated that when evaluating this Quotation, it complied with the requirements of Regulations 203, 204, 205, 206 and 207 of the Regulations. Thus, the Appellant's contention that, the Respondent had contravened the law for awarding the Quotations to non responsive tenderers is baseless and unsubstantiated. The Respondent had awarded the Quotations to tenderers whose quotations were found to be responsive as per the Quotation Document.

Finally, the Respondent prayed for the following orders:-

- i. The Quotation process should not be nullified since the Respondent complied with all the requirements of the Act, Regulations and PPRA guidelines;
- ii. The Appeals Authority should not order retendering, since the Appellant's complaint does not have substance; and
- iii. An order that each party to bear its own costs.

ANALYSIS BY THE APPEALS AUTHORITY

1.0 Whether the Appellant's disqualification was proper in law

In resolving this issue, the Appeals Authority reviewed the record of Appeal and observed that the Respondent through a letter dated 2nd June 2023, informed the Appellant that it was disqualified from the Quotation process for failure to quote prices of some items provided in the BOQ. The Appeals Authority observed further that prior to the issuance of the above mentioned letter, the Appellant was invited for



negotiations. During the negotiations, it was found to have not quoted prices for some of the items in the BOQ. The Appellant was accorded an opportunity to fill in items which were previously not filled in the BOQ. However, through a letter dated 23rd May 2023 the Appellant, apart from confirming that it did not quote prices for Items No. 33, 34, 35, 36 and 37 of the BOQ, indicated that if the said prices were still required it should be invited for further negotiations. During the hearing the Appellant also conceded not to have quoted the prices for Items No. 33, 34, 35, 36 and 37 of the BOQ.

The Appeals Authority revisited Regulation 205(b) of the Regulations which reads as follows:-

*"All tenders shall be checked for substantial responsiveness to the technical requirements of the tendering documents and non-conformity to technical requirements, **which are justifiable grounds for rejection of a tender includes the following:***

(a)

*(b) **failure to quote for a major item in the package.**"*

(Emphasis Added)

The above quoted provision clearly entails that each tender should be checked for substantial responsiveness to the requirements of the Tender Document. Among the grounds that would lead to rejection of a tender is failure to quote for a major item in the package.

The Appeals Authority revisited the Quotation Document and observed that Lot 5 was for supply of painting and finishing materials. The required materials and their quantities were specified in the BOQ.

The bottom of the page features three handwritten elements. On the left, there is a large, stylized signature. In the center, there is a smaller, more compact signature. On the right, there is a mark that resembles a checkmark or a signature flourish. A curved line connects the number '11' above to this mark on the right.

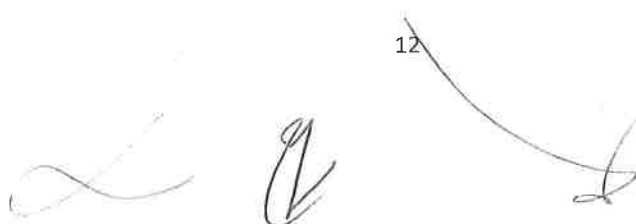
Tenderers were required to fill in unit price and total price per each Item. The Appeals Authority reviewed the Appellant's quotation on Lot 5 and observed that among the thirty eight items that were to be priced, it indicated prices for thirty two items only while six items were not priced. In view of this fact, the Appeals Authority finds the Appellant's BOQ to be incomplete. Since the major component for this Quotation is BOQ, the Appellant's partial quotation ought to have been noted during the evaluation and its quotation should have been disqualified pursuant to Regulation 205(b) of the Regulations.

The Appeals Authority observed further that, after completion of the evaluation process, the Appellant was ranked to be the second lowest evaluated tenderer. Since the first ranked tenderer failed to make appearance on the negotiations date, the Appellant being the second lowest evaluated tenderer was invited for negotiations. In view of this fact the Appeals Authority observed that, since the Appellant did not quote a price for some major items on the BOQ, it should not have been considered to be the second lowest evaluated tenderer.

The Appeals Authority noted that, during negotiations the Appellant's quotation was observed to have items on the BOQ that were not priced and the Respondent accorded it an opportunity to price the same. The Appeals Authority finds the Respondent's act in this regard to have contravened Regulations 225(2)(d) of the Regulations which prohibits negotiations to be conducted on an item that form a crucial or deciding factor during evaluation. Regulation 225(2)(d) reads as follows:-

"225(2) *Negotiations shall not be conducted-*

12

The image shows three handwritten signatures in black ink. The first signature on the left is a cursive 'L'. The second signature in the middle is a cursive 'A'. The third signature on the right is a cursive 'J'. Above the third signature, the number '12' is written in a small, simple font.

(d) to substantially alter anything which formed a crucial or deciding factor in the evaluation of tender".

(Emphasis Added)

Based on the requirements of the law, the Appeals Authority is of the firm view that since the prices on the BOQ form a deciding factor during evaluation of tenders, the Respondent ought not to have allowed the Appellant to alter anything on the BOQ. The Appellant's tender was non-responsive and it ought to have been disqualified during the evaluation process.

Therefore, the Appeals Authority finds the Respondent's act of disqualifying the Appellant to have complied with the requirements of Regulation 206(2) of the Regulations which provides clearly that a non-responsive tender shall be rejected and it may not be made responsive by correction of the deviations. The provision reads as follows:-

"Reg. 206(2) Where a tender is not responsive to the tender document, it shall be rejected by the procuring entity, and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation."

The Appeals Authority further considered the Appellant's complaint that the Respondent's letter dated 2nd June 2023 did not include names of the successful tenderers, awarded prices and the completion period. To ascertain the Appellant's contention, the Appeals Authority revisited Regulation 231(2) and (4) (a),(b)and (c) of the Regulations which require the procuring entity to issue the Notice of Intention to award



that includes the names of the successful tenderer, awarded prices and completion period. The provision reads as follows:-

"Reg. 231(2) upon receipt of the notification of award decision from the tender board, the accounting officer shall, having satisfied himself that proper procedures have been followed and within three days, issue a notice of intention to award the contract to all tenderers who participated in the tender in question giving them seven working days within which to submit the complaint, if any.

(3)

(4) The notice referred to in sub-regulation (2) shall contain-

(a) name of the successful tenderer;

(b) the contract sum and completion or delivery period;

(c) reasons as to why the tenderers were not successful."

According to the record of Appeal, the Respondent vide a letter dated 2nd June 2023 which was served to the Appellant on 12th June 2023 giving the reason for the Appellant's disqualification. The said letter did not indicate names of the successful tenderers, awarded price and completion period as required by Regulation 231(4) of the Regulations.

From the above observations, the Appeals Authority finds the Respondent to have contravened the requirements of the law in this



regard. However, such an anomaly did not prejudice the Appellant in any way as it had been observed above that the Appellant was properly disqualified for failure to quote prices for some of the items of the BOQ.

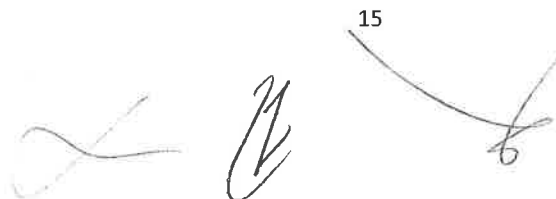
The Appeals Authority concludes the first issue in the affirmative that the disqualification of the Appellant was proper given the circumstances.

2.0 Whether the award of the quotations to the successful tenderers was justified

In this Appeal the Appellant challenges the award made to M/S FK & CF Investment Company for Lots 2, 5, 6 and 7 alleging that the said tenderer did not participate in the Quotation process. The Appellant also challenges the awards made to Alphonse A. Msale for Lot 1 and Adrian P. Lymo for Lot 4 asserting that the tenderers were non-responsive for failure to comply with the requirements of the Quotation Document. In substantiating its decision, the Respondent contended that M/S FK & CF Investment Company was one of the tenderers who participated in the Quotation process and complied with all the requirements that rendered awards for Lots 2, 5, 6 and 7 to it. The Respondent also indicated that Alphonse A. Msale and Adrian P. Lymo were both tenderers in this Quotation process and complied with all the relevant requirements, thus they were awarded the quotation.

In ascertaining the validity of the rival arguments by the parties, the Appeals Authority deemed it proper to analyse the validity of the award for each of the tenderer who has been alleged to be unfairly awarded the quotation as hereunder:-

15



(a) M/S FK & CF Investment Company

In substantiating if M/S FK & CF Investment Company participated in this Quotation process the Appeals Authority reviewed the record of Appeal and observed that the Quotation opening record indicates that the deadline for submission of quotation was 2nd May 2023 at 11.00 hours. On the deadline fifteen (15) quotations were received. The Appeals Authority observed that M/S FK & CF Investment Company submitted quotations for Lots 2, 5, 6 and 7. The Checklist Form that was used to record the readout information identified M/S FK & CF Investment Company as FK and CF Company. The form also indicated that M/S FK & CF Investment Company submitted quotations for four Lots and all complied with the eligibility requirements that were readout. In addition, the Checklist Form was signed by one Wilhelmo P. Kimaro on behalf of the Respondent and Ms. Salma A. Swavillah on behalf of the tenderers.

The Appeals Authority reviewed the evaluation report and observed that M/S FK and CF Investment Company had been referred by the Respondent's evaluators as M/S FK and CF Company. The evaluation report indicates further that M/S FK and CF Company was evaluated and found to have complied with the requirements of the Quotation Document in all four Lots. During financial comparison M/S FK and CF Investment Company was found to be the lowest evaluated tenderer in Lots 2, 6 and 7. In addition, the firm was found to be the third ranked evaluated tenderer in Lot 5. Since the first lowest evaluated tenderer in Lot 5 did not make an appearance during negotiations and the Appellant who was the second lowest evaluated tenderer in the same Lot was found to be non-responsive, M/S FK and CF Company was considered to



be the lowest evaluated tenderer and was invited for negotiations. After successful negotiations it was recommended for award of Lot 5.

The Appeals Authority observed that the Tender Board at its meeting held on 12th May 2023 approved the recommendations of awards for Lots 2, 6, and 7 to M/S FK and CF Company. In addition, the Respondent's invitation letter for negotiations was addressed to M/S FK and CF Company. Negotiations conducted on 22nd and 29th May 2023 indicated that the parties were the Respondent and M/S FK and CF Company. The letter of award was also issued to M/S FK and CF Company.

Having observed that M/S FK and CF Investment Company had been referred interchangeably by the Respondent as M/S FK and CF Company and M/S FK and CF Investment, the Appeals Authority found it proper to ascertain which exactly was a tenderer in the disputed Quotation process. In so doing the Appeals Authority revisited the record of Appeal and observed that application letters attached to the quotations for Lot 2, 5, 6 and 7 indicate that the tenderer is M/S FK and CF Investment Company. It was further noted from the documents that were attached for purposes of establishing eligibility of a tenderer, like Business Licence, Tax Clearance Certificate, TIN Certificate, EFD receipt and Extract from the Registrar (BRELA) all had the name of M/S FK and CF Investment Company.

In view of the above observations the Appeals Authority is of the settled view that the tenderer which participated in this Quotation was M/S FK and CF Investment Company. During the opening of the quotations the Checklist Form of M/S FK and CF Investment Company was recorded as M/S FK and CF Company and was signed by Wilhelmo P. Kimaro on



behalf of the Respondent and Salma A. Swavillah on behalf of the tenderers for purposes of verifying the submitted quotations. From the record of this Appeal it is crystal clear that Salma A. Swavillah, the Appellant's procurement officer who represented the Appellant in this Appeal, on the date of the quotations opening was nominated as the tenderers' representative and in that regard she signed the opening Checklist Form of M/S FK and CF Investment Company that contained the name of M/S FK and CF Company. In view of this fact, Salma A. Swavillah was aware that M/S FK and CF Investment Company participated in the disputed Quotation process.

In addition to the above findings, the Appeals Authority is of the firm view that, the fact that the Respondent has been referring M/S FK and CF Investment Company as M/S FK and CF Company and M/S FK and CF Investment interchangeably does not negate the fact that the said tenderer participated in the Quotation process.

Given the above findings, the Appeals Authority rejects the Appellant's contention that M/S FK and CF Investment Company did not participate in the Quotation under Appeal.

(b) Alphonse A. Msale

The Appeals Authority reviewed the Appellant's ground of Appeal in relation to the above named tenderer and observed that during the application for administrative review, the Appellant challenged the award made to the said tenderer by indicating that, it failed to quote for some of the Items in the BOQ and yet it has been awarded the quotation. In this Appeal the Appellant challenges the award made to Alphonse A.

The page contains two handwritten signatures or initials. The one on the left is a large, stylized signature, possibly 'Alphonse A. Msale'. The one on the right is a smaller, more compact signature or set of initials.

Msale on the ground that he failed to attach some of the mandatory documents for establishing his eligibility.

From the above observation it is clear that the Appellant's ground of Appeal in this Appeal differs from the complaint that was submitted when it lodged its application for administrative review to the Respondent. Since this is an Appeal arising out of the application for administrative review filed before the Appeals Authority in accordance with Section 97(1) and (2)(b) of the Act, a tenderer is required to base its appeal on the dissatisfied matters that were not settled before the accounting officer on the application for administrative review. This position was stated by the Appeals Authority in ***M/S SGS Tanzania Superintendence Company Ltd and Tanzania Communications Regulatory Authority and M/S Bureau Veritas Tanzania Ltd***, Appeal Case No. 38 of 2021-22.

The Appeals Authority also cited the case of ***Farida & Another versus Domina Kagaruki***, Civil Appeal No. 136 of 2006, Court of Appeal of Tanzania at Dar es Salaam (unreported), where the court held that:-

"it is the general principle that the appellate court cannot consider or deal with issues that were not canvassed, pleaded and not raised at the lower court."

Given that observation the Appeals Authority would not delve on the Appellant's argument in relation to the failure of Alphonse A. Msale to attach the required documents as it is a new ground of Appeal.

  19

(c) Adrian P. Lymo

The Appeals Authority reviewed the Appellant's application for administrative review and observed that it did not raise any issue in relation to award made to Adrian P. Lymo on Lot 4. The Appeals Authority observes that this is a new ground of Appeal and reiterates its position stated in paragraph (b) above, that new grounds of Appeal that were not raised during the application for administrative review would not be considered in the appeal. In that regard the Appellant's ground of Appeal on this point would not be dealt with.

In view of the above findings, the Appeals Authority concludes the second issue in the affirmative that the award of the Quotations to the successful tenderers was justified.

3.0 What reliefs, if any, are the parties entitled to?

Taking cognizance of the findings hereinabove, that the Appellant was fairly disqualified and that the award of Quotations made to the successful tenderers was justified; the Appeals Authority hereby dismiss the Appeal for lack of merits.

We make no order as to costs. It is so ordered.

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

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



This decision is delivered in the presence of the Respondent and absence of the Appellant though duly notified this 27th day of July 2023.

HON. JUSTICE (rtd) SAUDA MJASIRI



.....
CHAIRPERSON

MEMBERS: -

1. MS. NDEONIKA MWAIKAMBO.....

2. DR. WILLIAM KAZUNGU.....