

**IN THE PUBLIC PROCUREMENT APPEALS AUTHORITY**

**APPEAL CASE NO. 21 OF 2020-21**

**BETWEEN**

**M/S SGS TANZANIA SUPERINTENDENCE CO. LTD.....APPELLANT**

**AND**

**TANZANIA COMMUNICATIONS REGULATORY**

**AUTHORITY ..... RESPONDENT**

**DECISION**

**CORAM**

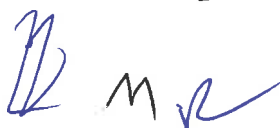
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|-------------------------------------|-----------------|
| 1. Hon. Justice (rtd) Sauda Mjasiri | - Chairperson   |
| 2. Dr. Leonada Mwangike             | - Member        |
| 3. Adv. Rosan Mbwambo               | - Member        |
| 4. Ms. Florida Mapunda              | - Ag. Secretary |

**SECRETARIAT**

- |                        |                        |
|------------------------|------------------------|
| 1. Ms. Agnes Sayi      | - Senior Legal Officer |
| 2. Ms. Violet Limilabo | - Legal Officer        |

**FOR THE APPELLANT**

- |                            |                             |
|----------------------------|-----------------------------|
| 1. Mr. Kahoza Nicholas     | - Advocate, Aymak Attorneys |
| 2. Mr. Penningtone Paschal | - Advocate, Aymak Attorneys |
| 3. Mr. Graig Wilson        | - Contract Manager, SGS     |



4. Mr. Selemani Masudi

- Lawyer, Aymak Attorneys

**FOR THE RESPONDENT**

1. Ms. Jehovaness Zacharia

- Principal Legal Officer

2. Ms. Gloria Rwakibarila

- Legal Officer

3. Ms. Vitalia Kidabolo

- Legal Officer

4. Mr. Sadath Kalolo

- Head Teletraffic Management

5. Mr. Benito Kalinga

- Head of Procurement

Management Unit

6. Mr. Richard Malipula

- Senior Procurement and Supply  
Officer

The Appeal was lodged by **M/s SGS Tanzania Superintendence Co. Ltd** (hereinafter referred to as "**the Appellant**") against **Tanzania Communications Regulatory Authority** commonly known by its acronym TCRA (hereinafter referred to as "**the Respondent**").

The Appeal is in respect of Tender No. AE-020/HQ/2019-20/C/05 for Selection of Consultant for Pre-inspection of Imported Electronic Communication Equipment and Collection of Advance Eco-levy Fees (hereinafter referred to as "**the Tender**").

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

The Tender under Appeal was conducted through Restricted International Competitive Selection method as specified in the Public Procurement

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Regulations, GN. No. 446 of 2013 and GN. No. 333 of 2016 (hereinafter referred to as "**the Regulations**").

On 25<sup>th</sup> June 2020, the Respondent through Tanzania National e-Procurement System (TANePS) invited three (3) pre-qualified tenderers to submit their technical and financial proposals for the Tender. The deadline for submission was initially set for 24<sup>th</sup> July 2020; however, it was extended until 7<sup>th</sup> August 2020. On the deadline for submissions, all three (3) invited firms, the Appellant's inclusive, submitted their proposals. Technical proposals were opened on the same date through TANePS.

Technical proposals were then subjected to evaluation which was conducted into two stages namely; preliminary and detailed technical evaluation. During preliminary evaluation all three (3) firms were found to be responsive to the requirements of the Request for Proposal (RFP). Thus, were subjected to detailed technical evaluation. In that stage, proposals were evaluated and at the end technical scores of each one of them were weighted out of one hundred percent (100%) to obtain seventy percent (70%) required as per the RFP. After completion of that process, one (1) firm was disqualified for scoring below the minimum required score. The remaining two (2) firms the Appellant inclusive, scored above the minimum score as shown here under: -

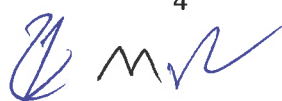
<b>S/N</b>	<b>FIRM'S NAME</b>	<b>POINTS BY 70%</b>	<b>POINTS BY 100%</b>	<b>REMARK</b>
1.	M/s SGS Tanzania Superintendence Co. Limited	62.58	89.40	Pass
2.	M/s Bureau Veritas Tanzania Limited	58.24	83.20	Pass
3.	M/s TUV Rheinland Middle East FZE	48.00	68.57	Fail

On 2<sup>nd</sup> October 2020, the Respondent notified the two (2) firms that they scored above the minimum scores. According to the aforementioned letter, the financial proposals were to be opened within fourteen (14) days from the date of the notification letter. The Appellant received the said letter on 26<sup>th</sup> October 2020 via TANEPS.

On 28<sup>th</sup> October 2020, the Appellant wrote a letter to the Respondent seeking clarification as to when exactly financial proposals would be opened. In the same letter, the Appellant requested to be availed with a breakdown of the technical evaluation scores. The Respondent did not respond to the Appellant's letter.

On 20<sup>th</sup> November 2020, financial proposals for the firms which passed technical evaluation were opened. The proposals were then subjected to financial evaluation whereby after its completion the Appellant scored 13.20 and M/s Bureau Veritas Tanzania Limited scored 30.00. Thereafter the financial and technical scores were combined whereby M/s Bureau Veritas Tanzania Limited scored 88.24 and the Appellant scored 75.78. The Evaluation Committee recommended award of the Tender to M/s Bureau Veritas Tanzania Limited after being found to have scored the highest mark compared to the Appellant.

On 6<sup>th</sup> January 2021, the Respondent issued the Notice of Intention to award the Tender to all firms who participated in the Tender process. The Notice indicated that the Respondent intends to award the Tender to M/s Bureau Veritas Tanzania Limited at a total negotiated rate (cost) of 9.5% on the collected advance Eco-levy exclusive of withholding tax.

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Dissatisfied with the Notice of Intention to award, on 18<sup>th</sup> January 2021, the Appellant applied for administrative review to the Respondent, challenging amongst others, scores awarded to it. On 20<sup>th</sup> January 2021, the Respondent informed the Appellant that the application for administrative review was filed beyond the allowed time but it will work on it and provide its decision. Having not received any decision from the Respondent on 29<sup>th</sup> January 2021, the Appellant filed this Appeal to the Appeals Authority.

### **ISSUES**

During the hearing the following issues were agreed upon by the parties and approved by the Members of the Appeals Authority:

- 1. Whether the Appellant's application for administrative review was filed within time;**
- 2. Whether the Respondent awarded the contract to the proposed successful tenderer prematurely;**
- 3. Whether the Appellant was notified of the opening date of the financial proposals;**
- 4. Whether the award to the proposed successful tenderer is justified; and**
- 5. What reliefs, if any, are the parties entitled to?**

### **SUBMISSIONS BY THE APPELLANT**

The Appellant's grounds of Appeal as well as oral submissions during the hearing may be summarized as follows: -

1. That, with regard to the first issue the Appellant submitted that, its application for administrative review to the Respondent was submitted within the time prescribed by the law. According to Section 96 (4) of the Public Procurement Act, No. 7 of 2011 as amended (hereinafter referred to as "**the Act**") an accounting officer is required to entertain a complaint lodged to it within seven (7) working days from the date the tenderer submitting it became aware of the circumstances giving rise to the complaint. The Appellant submitted that, the Respondent issued the Notice of Intention to award on 8<sup>th</sup> January 2021 through TANEPS. Upon being dissatisfied with such a notice, the Appellant filed an application for administrative review to the Respondent on 18<sup>th</sup> January 2021. Counting from 8<sup>th</sup> January 2021 when the Appellant received the Notice of Intention to award, the seven (7) working days for filing a complaint was to end on 20<sup>th</sup> January 2021. The Appellant lodged its application for administrative review on 18<sup>th</sup> January 2021 within the prescribed time under the law. Thus, the Respondent ought to have entertained the same.

The Appellant added that, the Respondent erred in law for informing it through the letter dated 20<sup>th</sup> January 2021 that its application for administrative review was lodged beyond the stipulated time limit. The Appellant submitted that, the Respondent ought to have counted the seven working days within which complaints were to be filed from the date it uploaded the Notice of Intention to award on TANEPS, that is 8<sup>th</sup> January 2021. To the contrary, the Respondent left the counting to be done by the system. The Respondent ought to have been guided by the requirement of the law in counting the seven (7) working days.

2. That, with regard to the second issue that award to the proposed successful tenderer was made prematurely, the Appellant submitted that, the Respondent issued an award letter to the proposed successful tenderer, M/s Bureau Veritas Tanzania Limited on 18<sup>th</sup> January 2021 before a lapse of seven (7) working days from the date it issued the Notice of Intention to award. The Respondent issued an award letter on the same date it received the Appellant's complaint challenging the tender results. The Respondent ought to have waited for the lapse of seven (7) working days before proceeding to award the Tender to the proposed successful tenderer. The seven (7) working days lapsed on 20<sup>th</sup> January 2021.
3. That, with regard to the third issue relating to the opening of financial proposals, the Appellant submitted that Clause 37 of Instruction to Consultants (ITC) and Regulation 300 of the Regulations requires the procuring entity to invite tenderers whose technical scores are above the minimum score to attend the opening of financial proposals. The said invitation should indicate the date and the time prescribed for the opening of the financial proposal. In the disputed Tender the Respondent failed to comply with such mandatory requirement of the law. The Appellant submitted that, on 26<sup>th</sup> October 2020 through TANEPS it received the Respondent's letter dated 2<sup>nd</sup> October 2020. The said letter notified the Appellant the results of the technical proposals and it also indicated that financial proposals would be opened within fourteen days (14) from the date of the letter. According to the Appellant, by the time it received the aforementioned letter, the fourteen (14) days within which the financial proposals were to be opened had already lapsed. Thus, on 28<sup>th</sup> October 2020,




the Appellant wrote a letter to the Respondent seeking to be informed of the exact date for the opening of the financial proposals. In the same letter the Appellant requested to be availed with a breakdown of technical scores. To the contrary, the Respondent never replied to the Appellant's concern. Thus, the Appellant was not aware as to when the financial proposals were or would be opened.

The Appellant added that, since it was denied an access to participate in the opening of the financial proposals, its rights were infringed and the Respondent's act in this regard contravened Clause 37 of the ITC read together with Regulation 300 of the Regulations.

4. That, with regard to the fourth issue that the award made to the proposed successful tenderer was not justified, the Appellant submitted that the Respondent's evaluation process was conducted in contravention of the RFP. According to the Appellant, the RFP has stipulated clearly on how the scores should be awarded on each criteria. The technical evaluation report did not indicate scores of each tenderer per every evaluation criteria. The evaluation report simply summed up that the Appellant scored 62.58 and the proposed successful tenderer scored 58.24. The report does not indicate how the scores were arrived at.

The Appellant submitted further that, the scores in the technical evaluation report differs significantly with the results of technical evaluation contained in the Respondent's letter dated 2<sup>nd</sup> October 2020. The said letter indicated that the Appellant's technical score was 89.40% while the proposed successful tenderer's score was 83.20%. The provided scores do not relate to the findings of the evaluation





report. The Appellant argued that, the uncertainty of scores raised doubt whether the Respondent's evaluation process adhered to the requirement of the RFP. Thus, the Appellant doubted if the subsequent award thereafter was proper in the eyes of the law.

5. Finally, the Appellant prayed for the following orders:-

- i. A declaration that the complaint (application for administrative review) by the Appellant was filed within time;
- ii. A declaration that the award of the contract to M/s Bureau Veritas Tanzania Limited was done prematurely;
- iii. Nullification of the proposed award of tender to M/s Bureau Veritas Tanzania Limited;
- iv. Review of the technical scores by all bidders and verification of eligibility to participate in the tender;
- v. A declaration that M/s Bureau Veritas Tanzania Limited does not possess the minimum qualification to participate in the tender;
- vi. Award of the tender to the Appellant;
- vii. Legal fees to the tune of TZS 20,000,000.00;
- viii. Filing and other costs fees amounting to TZS 500,000.00; and
- ix. Any other order the Honorable Appeals Authority may deem fit and fair to grant.



## REPLY BY THE RESPONDENT

The Respondent's reply to the Appellant's grounds of Appeal as well as oral submissions during the hearing may be summarized as follows: -

1. That, the Respondent invited tenderers who possess minimum requirements to participate in the Tender. This Tender was preceded by pre-qualification process which shortlisted eligible tenderers who met the requisite criteria as provided in the Expression of Interest document. Thus, all tenderers who participated in this tender were eligible to participate. Furthermore, the Respondent submitted that, if the Appellant was aware that amongst the tenderers who participated in the Tender were unqualified, it ought to have challenged the participation of unqualified tenderers immediately after it became aware of such circumstances.
2. The Respondent in addressing the first and second issues submitted that, the application for review was filed beyond time, as a result the Respondent proceeded to issue an award letter to the proposed successful tenderer. The Respondent submitted further that the Tender process was conducted through TANEPS and the seven (7) working days were counted by the system. Thus, after the lapse of seven (7) days the system locked itself and it allowed the Respondent to proceed with award of the tender. On 18<sup>th</sup> January 2021 the Respondent issued an award letter to the proposed successful tenderer and it also received the Appellant's application for review. The Respondent on 20<sup>th</sup> January 2021 informed the Appellant that its application for administrative review was filed



beyond the stipulated time limit; however, the same would be entertained despite the delay. The Respondent issued its decision with respect to the Appellant's application for administrative review on 1<sup>st</sup> February 2021.

3. That, with regard to the third issue the Respondent submitted that, the Appellant was notified of the results of its technical proposal in a letter dated 2<sup>nd</sup> October 2020 uploaded in TANEPS on 26<sup>th</sup> October 2020. The letter informed the Appellant that its technical proposal scored above the minimum qualifying mark. The letter also informed the Appellant that, the opening of the financial proposals will take place within fourteen (14) days. Therefore, according to the Respondent, the Appellant was duly notified of the opening of the financial proposals.

The Respondent added that, the financial proposals were opened online through TANEPS, thus the Appellant ought to have received an instant notification. Furthermore, the Appellant was able to view the financial opening results when visiting TANEPS as the record of opening remains intact.

4. That, with regard to the fourth issue, the Respondent submitted that the award is proper as the evaluation was conducted through TANEPS and in observance with the criteria provided for in the RFP. The evaluation was conducted in two parts, namely; technical and financial evaluation. The technical evaluation scores were 62.58 for the Appellant and 58.24 for the proposed successful tenderer. These scores were changed to 89.40% and 83.20% respectively for the Appellant and proposed successful tenderer after being



weighted out of one hundred percent (100%) to obtain seventy percent (70%) required by the RFP. The Respondent added further that, the breakdown of the technical evaluation scores were to be found in the TANEPS. The evaluation report relied upon by the Appellant was just a summary of the detailed analysis done in the TANEPS.

The Respondent expounded further that, after the financial proposals were opened the same were evaluated. After completion the scores of technical and financial proposals were combined and the proposed successful tenderer emerged to have scored the highest, thus it was awarded the tender.

5. Finally, the Respondent prayed for the following orders:-

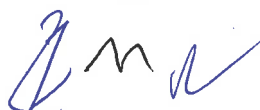
- i. Dismissal of the Appellant's claims;
- ii. Cost of the Appeal; and
- iii. Any other order the Honorable Appeals Authority may deem fit and fair to grant.

### **ANALYSIS BY THE APPEALS AUTHORITY**

The Appeals Authority took cognizance of the issues framed by the parties at the hearing of this Appeal and proceeds to analyze them as hereunder: -

#### **1.0 Whether the Appellant's application for administrative review was filed within time**

In analyzing this issue, the Appeals Authority revisited the Appeal record and observed that, the Respondent through a letter dated 6<sup>th</sup> January



2021 issued the Notice of Intention to award the Tender to all firms who participated in the Tender process. The Notice was served to the Appellant on 8<sup>th</sup> January 2021 through TANEPS. Dissatisfied with tender results, on 18<sup>th</sup> January 2021 the Appellant applied for administrative review to the Respondent. The Appellant claimed that its application for administrative review was lodged within the prescribed time limit while the Respondent claimed that the same was filed beyond the time limit.

In order to ascertain the validity of both parties arguments in relation to time limit for submitting applications for administrative review, the Appeals Authority revisited Section 96(1) and (4) of the Act which provide as follows: -

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

(4) *“The accounting officer shall not entertain a complaint or dispute unless it is **submitted within seven working days from the date the tenderer submitting it became aware of the circumstances giving rise to the complaint or dispute or when that tenderer should have become aware of those circumstances, whichever is earlier**”.*

(Emphasis provided)

The above quoted provisions stipulate clearly that, a dissatisfied tenderer is required to lodge a complaint if any to the accounting officer within seven (7) working days of becoming aware of the circumstances giving rise to the complaint. The facts of this Appeal indicate that the Appellant became aware of the circumstances giving rise to the complaint on 8<sup>th</sup> January 2021 when it received the Respondent's Notice of Intention to award. Counting from 8<sup>th</sup> January 2021 the seven (7) working days within which an application for administrative review was to be filed ended on 20<sup>th</sup> January 2021. The Appellant filed its application for administrative review on 18<sup>th</sup> January 2021.

From the above facts and the requirement of the law the Appeals Authority is of the settled view that the Appellant's application for administrative review lodged on 18<sup>th</sup> January 2021 was within the time provided under the law. Accordingly, the Appeals Authority concludes the first issue in the affirmative, that the Appellant filed its application for administrative review within the prescribed time.

## **2.0 Whether the award of the Tender was made prematurely**

In resolving this issue, the Appeals Authority revisited Section 60(5) of the Act and Regulation 231(6) of the Regulations which provide as follows: -

Section 60(5) "***Where no complaints have been lodged pursuant to subsection (3) the accounting officer shall issue a notice of acceptance to the successful tenderer***".

Regulation 231(6) "***Where no complaints have been lodged pursuant to subsection (2) the accounting officer shall***



*issue a notice of acceptance to the successful tenderer after all necessary approvals within and outside the country are obtained".*

(Emphasis provided)

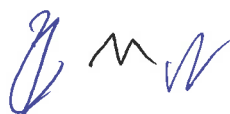
The above quoted provisions stipulate in clear terms that an award or acceptance letter would be issued where there is no complaint lodged after issuance of the Notice of Intention to award.

Section 60(3) of the Act allows tenderers who are dissatisfied with the Notice of Intention to Award to submit a complaint if any within seven (7) working days. The Section reads:-

*Section 60(3) "Upon receipt of the notification, the accounting officer shall, immediately thereafter 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 a complaint thereof, if any**".*

(Emphasis provided)

The Appeals Authority revisited the Appeal record and observed that, the Respondent issued an award letter to the proposed successful tenderer on 18<sup>th</sup> January 2021. It was observed further that, the Notice of Intention to award was issued on 8<sup>th</sup> January 2021 by being uploaded on the TANePS. Counting from 8<sup>th</sup> January 2021, the seven (7) working days within which tenderers were allowed to submit a complaint if





dissatisfied with the Notice of Intention to award ended on 20<sup>th</sup> January 2021.

From the sequence of events it is crystal clear that the Respondent issued a letter of award prior to the expiry of the seven (7) working days. That is to say, the award was issued on 18<sup>th</sup> January 2021 while the seven (7) working days ended on 20<sup>th</sup> January 2021.

From the above findings the Appeals Authority concludes the second issue in the affirmative that the Respondent awarded the Tender to M/s Bureau Veritas Tanzania Limited prematurely.

### **3.0 Whether the Appellant was notified of the opening date of the financial proposals**

In resolving this issue the Appeals Authority revisited parties' submissions whereby on one hand the Appellant claimed to have not been notified of the opening of the financial proposals as the date and time were not specified while on the other hand the Respondent claimed to have notified the Appellant.

The Appeals Authority revisited Clause 37.1 of Instruction to Consultants (ITC), Regulations 300(2) and 301(1) of the Regulations. The mentioned provisions read as follows: -

Clause 37.1 *"In case of QCBS, FBS and LCS, after the technical evaluation is completed, the PE shall notify in writing or in electronic forms that provide record of the content of the communication, **those Consultants that have secured the minimum qualifying mark, indicating the date, time and location for opening the financial***



**proposals.** *The date of opening of financial proposals shall not be sooner than seven (7) working days after the notification date and the financial proposals shall be opened publicly in the presence of representatives of the Consultants who choose to attend. Where all consultants are qualified to have their financial proposals opened in the case of quality and cost based selection or in the case of quality and least cost selection, the PE may fix shorter period for opening of financial proposal subject to obtaining confirmation of the attendance of all successful firms at the set date for opening”.*

Regulation 300 (2) **“A procuring entity shall notify the consultants who have secured the minimum qualifying mark, and indicate the date and prescribed time for opening the financial proposals”.**

Regulation 301(1) *“The date of opening of financial proposals shall not be sooner than two weeks after the notification date and the financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend”.*

The above quoted provisions stipulate clearly that a tenderer whose technical proposal scored above the minimum qualifying mark should be notified of the opening of the financial proposals. The notification should specify the date time and location for the opening of the financial proposals.


The record of this Appeal indicates that the Respondent on 26<sup>th</sup> October 2020 through TANEPS notified the Appellant that its technical proposal has scored above the minimum qualifying mark. The said letter indicated that the financial proposals would be opened within fourteen (14) days from the date of the letter. The Appeals Authority observed further that the notification letter was dated 2<sup>nd</sup> October 2020. On 28<sup>th</sup> October 2020 the Appellant sought for clarification from the Respondent as to when exactly the financial proposals would be opened. The Respondent never responded to the clarification sought. It was observed further in the evaluation report that, the financial proposals were opened on 20<sup>th</sup> November 2020.

Having related the above quoted provision to the facts of this Appeal the Appeals Authority is of the firm view that, the Appellant was not notified on the date, time and location of the opening of the financial proposals. Therefore, the Appeals Authority finds the Respondent to have erred in law as it contravened Clause 37.1 of the ITC and Regulation 300 (2) of the Regulations for failure to specify the date, time and location of the opening of the financial proposals.

From the above findings, the Appeals Authority concludes the third issue in the negative that the Appellant was not notified to the opening of the financial proposals.

#### **4.0 Whether the award to the proposed successful tenderer is justified**

In order to substantiate the validity of the parties' submissions in this issue, the Appeals Authority reviewed the RFP, the evaluation report obtained from TANEPS and a summary of the evaluation report



produced by the Respondent. In the course of so doing it observed that, Clause 20 of the Proposal Data Sheet (PDS) provides for criteria, sub criteria and points system (scores) for the evaluation of the technical and financial proposals.

The Appeals Authority revisited the summary of the technical evaluation report attached to the Respondent's statement of reply and observed that, the same did not contain a breakdown of how the scores were obtained. The Appeals Authority reviewed the evaluation report from TANEPS and observed that, at the detailed technical evaluation stage, technical proposals were given scores for each criterion as indicated in the PDS. The Appeals Authority has noted that the technical evaluation were weighted out of one hundred percent (100%) to obtain seventy percent (70%) required as per the RFP. That in the technical proposal the Appellant scored 62.58 and M/s Bureau Veritas Tanzania Limited scored 58.24 out of seventy percent (70%). After the scores were weighed out of 100% the Appellant scored 89.40% and M/s Bureau Veritas Tanzania Limited scored 83.20%.

The Appeals Authority revisited the evaluation report for the financial proposals and observed that the Appellant had quoted a tender price of USD 12,599,603 charge as % of total Eco-Levy fee of 25%. The proposed successful tenderer quoted a tender price of USD 4,262,354.34 charge as % of total Eco-Levy fee of 11%. Having evaluated the financial proposals the Appellant scored 13.20 and the proposed successful tenderer scored 30.00. Thereafter technical and financial scores were combined and the proposed successful tenderer emerged to

have the highest score of 88.24 followed by the Appellant who scored 75.78.

The Appeals Authority revisited Regulation 260 of the Regulations which provide as follows: -

Regulation 260 (1) *"The selection procedure based on the technical quality with price consideration shall start with the evaluation on technical proposals.*

*(2) The technical proposals considered satisfactory and classified by order of merit shall have the corresponding financial proposals opened.*

*(3) After necessary correction of arithmetic errors are made, a score of one-hundred percent shall be given to the lowest financial proposal and the score given to each of the other financial proposals is proportionately reduced.*

*(4) The technical and financial proposals shall be weighted as specified in the request for proposal and the combined value of the two proposals shall be calculated for each firm.*

*(5) Negotiations shall be initiated with the firm which has the highest combined score and shall be conducted in accordance with regulation 308, until an agreement is reached with one of the firms whose technical proposals are considered satisfactory and retained".*

From the above findings, the Appeals Authority is of the firm view that the Respondent's evaluation was conducted in a accordance with the criteria and sub-criteria provided in the RFP. However, taking cognizance of procedural irregularities observed on issues number 1, 2 and 3 herein above which indicate that the Respondent prematurely awarded the Tender, failed to entertain the Appellant's application for administrative review lodged within time and failed to notify the Appellant the time, date and location for the opening of the financial proposals, the Appeals Authority cannot conclude that the award made to the proposed successful bidder is justified. Therefore, the Appeals Authority concludes the fourth issue in the negative.

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

Given the above findings that the Tender process was marred by procedural irregularities, the Appeals Authority hereby allow the Appeal. The Respondent is ordered to re-tender in compliance with the requirement of the law. Each party is to bear its own costs.

It is so ordered.

This Decision is binding on the Parties and may be executed in terms of Section 97 (8) of the Act.

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

A handwritten signature in blue ink, followed by the date '21' and another handwritten mark.

The Decision is delivered in the presence of the parties this 8<sup>th</sup> day of March 2021.

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

  
.....  
**CHAIRPERSON**

**MEMBERS:**

**1. DR. LEONADA MWAGIKE** .....

**2. ADV. ROSAN MBWAMBO** .....