

THE REPUBLIC OF UGANDA

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS
TRIBUNAL

(PPDA APPEALS TRIBUNAL)

APPLICATION NO.13 OF 2019

APPLICATION FOR ADMINISTRATIVE REVIEW OF THE DECISION OF PUBLIC
PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT OF A
PROCUREMENT FOR THE SUPPLY AND DELIVERY OF RESULT SLIPS AND
CERTIFICATES UNDER FRAMEWORK CONTRACT FOR TWO YEARS; REFERENCE
NUMBER: UNEB/SUPLS/2018-19/00225.

APPLICANT: ADARE SEC LTD TRADING AS KALAMAZOO SECURE
SOLUTIONS

1ST RESPONDENT: PUBLIC PROCUREMENT AND DISPOSAL
OF PUBLIC ASSETS AUTHORITY

2ND RESPONDENT: UGANDA NATIONAL EXAMINATIONS BOARD (UNEB)

Before: (OLIVE ZAALE OTETE (CHAIRPERSON), MOSES JURUA ADRIKO SC. MEMBER,
ABRAHAM NKATA (MEMBER), DAVID KABATERAINE (MEMBER), ENG. THOMAS
BROOKES ISANGA, MEMBER)



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DECISION OF THE TRIBUNAL

1.0 BACKGROUND/FACTS

- 1.1. The Uganda National Examinations Board (UNEB) initiated a procurement for the supply and delivery of result slips and certificates under framework contract for two years.
- 1.2. On 4th March 2019, UNEB invited and issued bidding documents to 9 bidders under Restricted Domestic bidding with a bid submission deadline of 2nd April 2019.
- 1.3. On 4th April 2019, 6 bidders submitted bids which were opened, prices read out and evaluated.
- 1.4. On 9th April 2019, the Chairman Evaluation Committee communicated the arithmetic corrections on the quantities and unit prices of 3 bidders namely Adare Sec Ltd trading as Kalamazoo Secure Solutions (Applicant), AI Security Print Ltd and Tall Security Print Ltd and all the three firms confirmed the correction of the prices.
- 1.5. On 10th April 2019, the Evaluation Committee recommended award of the contract to Smith & Ouzman Ltd as the Best Evaluated Bidder (BEB) for the supply and delivery of result slips and certificates under framework contract for two years.
- 1.6. On 11th April 2019, the Contracts Committee awarded the framework contract for 2 years for supply and delivery of result slips and certificates to the BEB at a contract price of UGX 8,810 (eight thousand eight hundred ten shillings only) 18% VAT inclusive i.e. the total unit rates stated in the price schedule.
- 1.7. The notice of the Best Evaluated Bidder was displayed from 15th April 2019 with a removal date of 30th April 2019.
- 1.8. On 29th April 2019, the Applicant applied for administrative review to the Accounting Officer.



1.9. On 10th May 2019, the Accounting Officer issued a decision rejecting the application for administrative review.

1.10. On 17th May 2019, the Applicant applied for administrative review to the 1st Respondent.

1.11. On 19th June 2019, the Authority issued a decision rejecting the application for administrative review.

2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION

2.1 On 2nd July, 2019 the Applicant lodged an application for review of the 1st Respondent's decision dated 19th June, 2019 listing 5 grounds of appeal with the Public Procurement and Disposal of Public Assets Appeals Tribunal (the Tribunal) seeking to have the decision of the 1st Respondent reviewed as follows -

ISSUES

1. *Whether the Authority erred in upholding the decision of UNEB to award the tender to Smith & Ouzman as Best Evaluated Bidder.*
2. *Whether Smith & Ouzman had a lower bid than the Applicant.*
3. *The correct interpretation of the statement of requirements in the bid document on what was meant by unit price.*
4. *Whether the 2nd Respondent availed documents to the Applicant for the purpose of administrative review in accordance with the PPDA Act.*
5. *What remedies are available?*

2.2 On 2nd July 2019, the Tribunal directed the Accounting Officer to suspend the process, and issued summons to the Respondents and copied the same to the Applicant requesting the former to provide the Tribunal with:

1. written response to the allegations or grounds of appeal;
2. record of proceedings;
3. notice of the decision that was given to the Applicant;
4. all documents that the Authority relied on to arrive at its decision.

2.3 In the same summons, the Tribunal directed both parties to file with the



Tribunal written submissions and any rejoinder to the submissions. This was done and the submissions were served on the respective parties.

- 2.4 The Tribunal notified the BEB of the application for administrative review and received a written response to the application from the BEB.

3.0 DISPOSAL OF APPLICATION

- 3.1 In disposing of the application for review, the Tribunal analysed the following documents-

- (1) the Application lodged with the Tribunal and appendices attached thereto dated 2nd July 2019.
- (2) written response and written submissions to the Applicant's application by the Authority and Annexes attached to the response and the submissions;
- (3) The Applicant's written submissions and Annexes to the submissions;
- (4) Written response by Smith and Ouzman Limited, the Best Evaluated Bidder (BEB) of the impugned procurement.

- 3.2 The Tribunal conducted a hearing for the parties on 12th July 2019. The Applicant was represented by its appointed agent Mr. Gayonga Benon Justin. The 1st Respondent was represented by Mr. John Kalemera. The 2nd Respondent was represented by the Accounting Officer, Mr. Dan` Nokrach Odongo, Victor Rugatsira Learned State Attorney and the entity's Senior Legal Officer Ms. Kemaali Annet. Mr. Kigozi Isa represented the BEB.

4.0 PRELIMINARY OBJECTION

- 4.1 Counsel for the 2nd Respondent raised a preliminary point of objection that the applicant lacked *locus standi* to present the application and prayed for a dismissal of the same. In support of the preliminary objection, the applicant submitted that the applicant company had appointed one Torby Forbes as the lawful attorney responsible for signing the bid and any other documents related to the impugned procurement process, administrative review documents inclusive. That Torby Forbes indeed signed the bid document and the complaint for administrative review at the Authority. It was surprising that a stranger by the names of Gayonga Benson signed the administrative review application documents lodged at the Tribunal instead of the lawful attorney



Torby Forbes. The said Gayonga Benson signed as advocate/agent of the applicant but not on behalf of the applicant.

- 4.2 Counsel for 2nd Respondent contended that this appeal was brought by a wrong party not being the bidder or his advocate or his lawful attorney in total disregard of the provisions under *Regulation 10 PPDA (Administrative Review) Regulations, 2014* which only allows an aggrieved bidder to appeal to the Tribunal. The 2nd Respondent referred to section 3 of *PPDA Act, 2003* which defines a bidder to mean any person artificial or physical intending to participate or participating in public procurement or disposal proceedings.
- 4.3 Counsel for the 2nd Respondent further argued that since Gayonga Benson who presented the appeal was neither the bidder, the advocate nor the lawful attorney of the bidder, he lacked *locus standi* to do so and renders the application incompetent. The principle of *delegates non potes delegare* which bars a delegate to further delegate his delegated power was invoked to deny the said Gayonga any lawful authority to exercise on behalf of Torby Forbes who appointed him agent. The argument was that Torby Forbes a donee of Powers of Attorney from the applicant company had no powers to delegate. He prayed for the application to be dismissed.
- 4.4 The applicant relied on a letter dated 2nd July 2019 to clarify that in his absence, Benon Justine Gayonga and Charles Mawenu would represent the company during the administrative review process the Tribunal. He submitted that the two agents for the applicant company were not delegates as construed by the 2nd Respondent but representatives to the applicant company to be present during the hearing of the appeal. The application was lodged by the applicant company and in the names of the company who under the circumstances has *locus standi*. The Tribunal was invited to consider the applicant not the one who signed the application and overrule the objection and allow the application to proceed on merits.
- 4.5 **Ruling of Tribunal**
The application is brought in the names of the aggrieved bidder, who undoubtedly is the applicant. The person who signs the documents lodged for administrative review does not become the applicant, but such person signs the same on behalf of the applicant. The Tribunal considered the argument raised by Counsel for the 2nd Respondent the manner in which the application was signed off by applicant/ agent/advocate of the Applicant instead of



merely 'on behalf of the applicant'. The Tribunal finds this contention to be a minor omission which did not affect the merits of the application in a substantial manner. The preliminary objection is therefore overruled.

5.0 SUBMISSIONS BY PARTIES ON ISSUES RAISED

5.1 Applicant's submissions

- 5.1.1 Issues 1 and 2 were argued together by the applicant. The two grounds were related to the bid presented by the BEB; as to whether the bid was lower than that presented by the applicant and, whether the 1st Respondent was right to uphold the entity's decision to award the tender to the BEB?
- 5.1.2 The applicant's submission was that the bid of the BEB was non responsive after it failed to follow instruction to bidders (ITB 14.7) when it quoted per piece and contract price as the total contract final price for the supplies. According to ITB 14.7, a bidder had to provide a fixed total price for the contract period to be stated in the price schedule and at financial comparison. It was the applicant's submission that while all other bidders complied with the requirement, it was only the BEB's bid which fell short of the requirement and because such requirement was material, the BEB's bid ought to have been rejected at administrative compliance stage.
- 5.1.3 It was the submission of the applicant that if the bid of the BEB had been rejected at administrative compliance stage based on the reasons given in support of the 1st ground, the applicant's bid price would have been found lower compared to all bids.
- 5.1.4 The 3rd issue was regarding the correct interpretation of what was meant by a unit price in accordance with statement of requirements in the bid document.
- 5.1.5 The applicant prayed that the Tribunal agrees with its submissions on the two issues and resolves in its favour. The applicant's submission was that column 5 of the price schedule clearly provided for; *Quantity (no. Of units).. [insert number of units of this item to be purchased]* which would not be interpreted to mean that number of units could be 1 piece of the specified item. The applicant contended that the number of units were the estimated quantities indicated under *the list of supplies and related*



services because under column 3, there was a required field of "1 (One) quantity for each item".

- 5.1.6 The applicant prayed that the Tribunal finds and holds that bidders were required to quote to estimated quantities to be supplied in 1 year not for 1 piece of any item.
- 5.1.7 The 4th issue was whether the Entity failed and or refused to supply documents to the applicant necessary for preparation of its application for administrative review.
- 5.1.8 Under section 89(2) of PPDA Act, 2003 an entity is expected to supply the following documents; summary of evaluation process, comparison of tenders proposals or quotations including the evaluation criteria and the reasons for rejecting the concerned bids. It is the contention of the applicant that the entity by merely providing the applicant only with a letter explaining or giving a brief on what was requested was in breach of the legal provision. The applicant prayed that the Tribunal finds the entity at fault.
- 5.1.9 The 5th issue was on remedies being sought; the applicant prayed that the Tribunal finds that the BEB's bid was non-compliant with the standard requirements of the price schedule in the bid document and rejects the same and sets aside the decision of the 1st Respondent upholding the decision of the entity declaring Smith and Ouzman Limited as BEB. The Applicant also prayed that the Tribunal finds the entity in breach of section 89(2) of the Act for failing to provide and supply necessary documents to the applicant. The applicant further prayed that the Tribunal declares it the BEB with the lowest price quotation.

5.2 Submissions by the Respondents

- 5.2.1 Counsel for the 1st Respondent submitted on issues 1 and 2 concurrently. He referred to ITB 14.1 which guided as to how prices in the bid submission sheet and in the price schedule should be quoted, ITB 14.2 which provided that all items in the schedule of supplies be listed and priced separately in the price schedules. He referred to the schedule of supplies as provided for under page 49 of the bidding document and submitted that the same listed 11 different types of certificates and 3



different types of result slips. His submission was that bidders were expected to list 14 items in total in the price schedule. The applicant listed only 2 items making its bid non-compliant. The 1st Respondent's decision to reject the applicant's complaint for administrative review on the matter was therefore proper and should be upheld. Counsel for the 1st Respondent further prayed that the issue with regard to whether the applicant's bid was the lowest should also be rejected.

- 5.2.2 With regard to the correct interpretation of what the bid document regarded as the unit price, Counsel for the 1st Respondent submitted that the right and correct interpretation of a unit price was the total price for each item stated in column 9 of the price schedule in the bidding document.
- 5.2.3 As to whether the entity denied the applicant a right to documents allowed under section 89(2) of the Act, Counsel for the 1st Respondent submitted that the issue concerning the 2nd Respondent's alleged non-production of documents to the Applicant to initiate administrative review proceedings had not been an issue at the authority level of administrative review and ought not to be an issue at this stage. He concluded his submissions with a prayer that the application be dismissed with no orders to costs.
- 5.2.4 The 2nd Respondent associated fully with the submissions of the 1st Respondent on the 1st, 2nd and 3rd issues. Regarding the 4th issue, the learned state attorney submitted that all necessary documents and information as required by law were given to the applicant upon request. The Contracts Committee approval of BEB was not given to the applicant because the law does not mention it as one of the documents a bidder is entitled to. The learned attorney prayed that the application be dismissed, and that the Tribunal upholds the decision of the Authority.
- 5.2.5 The BEB maintained in its letter or response to the Tribunal that the Authority's decision was a good decision and should be maintained.

6.0 RESOLUTION OF ISSUES BY THE TRIBUNAL

6.1 Issues 1 & 2 will be answered together.

Issue 1 is, "Whether the 1st Respondent erred in upholding the decision of UNEB to award the tender to Smith & Ouzman Limited as Best Evaluated



Bidder”, and Issue 2 is, “Whether Smith & Ouzman Limited had a lower bid than the Applicant”.

- 6.2 Part 2: Section 6 of the statement of requirements at page 49 of the Bidding Document provides for supplies and related services Procurement Reference Number: UNEB/SUPLS/2018-19/00225 as per the table below:

Item Number	Brief Description of Supplies and Related Services	Quantity	Unit of measure
1	CERTIFICATES		
A	UCE certificates	1	Piece
B	UACE Personalized certificates	1	Piece
C	Professional National Diploma	1	Piece
D	Professional National Certificates	1	Piece
E	Single certificates	1	Piece
F	Single Diploma	1	Piece
G	Ordinary Diploma	1	Piece
H	Higher Diploma	1	Piece
I	Certificate I,II & III	1	Piece
J	UJTC	1	Piece
K	CPCE	1	Piece
2	RESULT SLIPS		
A	UCE result slips	1	Piece
B	UACE result slips	1	Piece
C	PLE result slips	1	Piece

*The estimated quantities per year are as below;

Resultslips-1,190,000 pieces

Certificates- 450,000 pieces”

- 6.3 The above table provides for how the impugned procurement for supplies and related services is to be quoted in accordance with the bidding document.

- 6.4 The following Table presents a comparison of the bid prices between the BEB and the applicant:



Item Number	Brief Description of Supplies and Related Services	Quantity	Unit of measure	BEB Price (UGX)	Applicant's Price (UGX)
1	CERTIFICATES				
A	UCE certificates	1	Piece	700	1,466.25
B	UACE Personalized certificates	1	Piece	1,150	1,466.25
C	Professional National Diploma	1	Piece	700	1,466.25
D	Professional National Certificates	1	Piece	700	1,466.25
E	Single certificates	1	Piece	700	1,466.25
F	Single Diploma	1	Piece	700	1,466.25
G	Ordinary Diploma	1	Piece	700	1,466.25
H	Higher Diploma	1	Piece	700	1,466.25
I	Certificate I,II & III	1	Piece	700	1,466.25
J	UJTC	1	Piece	700	1,466.25
K	CPCE	1	Piece	700	1,466.25
2	RESULT SLIPS				
A	UCE result slips	1	Piece	220	229
B	UACE result slips	1	Piece	220	229
C	PLE result slips	1	Piece	220	229

- 6.5 From the foregoing, the Tribunal finds that the prices for the BEB are lower than the prices of the Applicant. The Authority therefore did not err in upholding the decision of the 2nd Respondent.
- 6.6 The Tribunal however faults the format of the BEB Notice published by the 2nd Respondent which is inconsistent with ITB 12.2 which states that the Price Schedule shall include separate unit prices.
- 6.7 Issue 4 is whether the Applicant was denied documents as required under section 89(2) of the PPDA Act, 2003.

Section 89 (2) of the Act provides that a procuring and disposing entity shall provide a bidder who seeks administrative review with;

- (a) a summary of evaluation process;



- (b) a comparison of the tenders, proposals or quotations, including the evaluation criteria used; and
- (c) the reasons for rejecting the concerned bids.

6.8 In disposing of this issue the Tribunal examined the Accounting Officer's letter dated 16th May 2019 addressed to the Applicant provided them with (i) a summary of evaluation process, (ii) comparison of the tenders/proposals, (iii) record of bid opening and the reasons for rejecting the concerned bids. The Tribunal basing on the above finds that the Applicant was not denied information by the Entity contrary to section 89 (2) of the Act.

7.0 **DECISION OF THE TRIBUNAL**

1. This Application is dismissed.
2. The decision of the Authority is affirmed, and the Entity may proceed to conclude the procurement process.
3. Each party shall bear its own costs.

SIGNED, SEALED and dated this 15th day of July 2019 by the said;

1. OLIVE ZAALE OTETE].....] CHAIRPERSON
2. MOSES JURUA ADRIKO SC.].....] MEMBER
3. DAVID KABATERAINE].....] MEMBER
4. ABRAHAM NKATA].....] MEMBER
5. ENG. THOMAS BROOKES ISANGA].....] MEMBER

