

THE REPUBLIC OF UGANDA

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY APPEALS
TRIBUNAL

(PPDA APPEALS TRIBUNAL)

REFERENCE NO. 4 OF 2019

REFERENCE OVER SERIOUS BREACH OF THE PPDA ACT 2003 BY THE KASESE DISTRICT LOCAL GOVERNMENT IN RESPECT OF THE TENDER FOR REVENUE COLLECTION FROM SALT LAKE MARKET IN KATWE KABATORO COUNCIL FOR FY 2019/2020.

APPLICANT

PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
AUTHORITY

RESPONDENT:

KASESE DISTRICT LOCAL GOVERNMENT

(Before: OLIVE ZAALE OTETE (CHAIRPERSON), ENG. THOMAS BROOKES ISANGA (MEMBER), DAVID KABATERAINE (MEMBER) AND ABRAHAM NKATA (MEMBER).

DECISION OF THE PPDA APPEALS TRIBUNAL

1.0 BACKGROUND/FACTS

1. On 11th April 2019, the Respondent initiated the procurement process for revenue collection from the Salt Lake market in Katwe Kabatoro Town Council.
2. On 27th September 2019 the Respondent displayed the notice of the best evaluated bidder in respect to the impugned procurement.
3. On 10th October 2019, Kimbulu Investments Ltd applied to the Accounting Officer of the Respondent for administrative review in respect to the impugned procurement.
4. On 15th October 2019, the Respondent entered into a contract with Amwet Investments Limited regarding the impugned procurement.
5. On 18th October 2019, the Applicant advised the Respondent to handle the administrative review application from Kimbulu Investment Limited.
6. On 7th November 2019, Kimbulu Investments Limited applied to the Applicant for administrative review.
7. On 12th November 2019, the Applicant received a reply from the Respondent wherein it is stated that the letter from the Applicant dated 18th October 2019 was received by the Respondent after the procurement process had been concluded.
8. On 5th December 2019, the Authority issued its administrative review decision regarding the impugned procurement and it was decided therein that a Reference would be made to the Tribunal for breach of Section 90 (7) of the Public Procurement and Disposal of Public Assets Authority, 2003 (PPDA Act, 2003) by the Respondent.

2.0 REFERENCE

2.1 On 18th December 2019, the Authority filed the instant reference seeking a declaration that there had been a serious breach of the Act by the Respondent in respect of the procurement in reference because the Respondent entered into a contract with the provider during the Administrative Review period.

2.2 On 20th January 2020, the Tribunal issued summons to the Respondent to file a written response to the Reference. The Respondent filed a detailed written submission with the Tribunal on 23rd January 2020.

3.0 DISPOSAL OF THE REFERENCE

~~3.1 *In disposing of the Reference the Tribunal analyzed the following documents;*~~

~~(1) *Reference dated 18th December 2019 filed by the Applicant and supporting annexes*~~

~~(2) *Written submission dated 23rd January 2020 filed by the Respondent.*~~

3.2 The Tribunal conducted a hearing on 28th January 2020. The Applicant was represented by Mr. John Kallemera and the Respondent represented himself.

3.3 Two issues were formulated for resolution by the Tribunal as follows:-

(a) Whether the Accounting Officer of the Respondent entering into a contract with the provider during the Administrative Review period amounted to a serious breach of the Act.

(b) Remedies

4.0 **SUBMISSIONS BY PARTIES**

- 4.1 Counsel for the Applicant submitted that Section 90 (3) of the PPDA Act, 2003 provides that a bidder may make a complaint to the Authority within ten working days from the date of communication of the decision by the Accounting Officer. This period is known as the administrative review period under Section 90 (7) (a) of the PPDA Act, 2003.
- 4.2 Counsel further submitted that Section 90(1) (1a) (b) of the PPDA Act, 2003 provides that an administrative review complaint by a bidder against a Procuring and Disposing Entity shall be made within ten (10) working days from the date the bidder first becomes aware or ought to have become aware of the circumstances giving rise to the complaint.
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- 4.3 Counsel submitted that the best evaluated bidder notice for the impugned procurement was displayed on 27th September 2019. The standstill period after the display of the notice expired on 10th October 2019. Counsel submitted that on 10th October 2019, Kimbulu Investments Limited applied to the Accounting Officer of the Respondent for administrative review in respect to the impugned procurement and on 15th October 2019, the Respondent signed a contract with Amwet Investments Limited.
- 4.4 Counsel further submitted that the execution of a contract between the Respondent and Amwet Investments Limited during the administrative review period fettered the mandate of the Applicant and the statutory right of Kimbulu

Investments Limited to the remedies provided for by the administrative review process under the PPDA Act, 2003

4.5 Counsel prayed that the Tribunal should declare there was a serious breach of the PPDA Act, 2003 by the Respondent in respect of the impugned procurement on account that the Entity executed a contract during the administrative review period and costs of this reference be provided for.

4.6 The Respondent in reply apologized for the mistake they committed for signing a contract with Amwet Investments Limited during the administrative review period. The Respondent further submitted that they did not have knowledge on administrative review process therefore could not determine the time when it begins and ends. The Respondent submitted that it was due to the lack of knowledge about administrative review process which led the Entity to sign a contract with Amwet Investments Ltd during the administrative review period. The Respondent prayed for leniency on the part of the Tribunal when making decision.

5.0 RESOLUTION BY THE TRIBUNAL

5.1 In resolving the Application, the Tribunal considered the documents availed to it, the law applicable and the submissions by the parties.

5.2 Section 90(1a)(b) of the Act provides that a complaint by a bidder against a procuring and disposing entity shall be made within ten working days from the date the bidder first becomes aware or ought to have become aware of the circumstances giving rise to the complaint.

5.3 The Tribunal noted that Section 90 (3) of the Act provides that where a bidder is not satisfied with the decision of the Accounting Officer, the bidder may make a

complaint to the Authority within ten working days from the date of communication of the decision by the Accounting Officer.

- 5.4 Section 90(7) (a) of the Act prohibits an Accounting officer from entering into a contract with the provider during the period of administrative review, set out in Part VII and Part VIIA of the Act.
- 5.5 The Tribunal relied on the admission of the Respondent that it signed contract with Amwet Investments Limited (Best Evaluated Bidder) during the administrative review and the reasons justifying their actions.
- 5.6 The Tribunal accordingly finds that the Respondent signed contract with Amwet Investments Limited on 15th October 2019 during the administrative review before the expiry of the ten working days provided for under Section 90(1a)(b). The signing of the contract by the Respondent with the best evaluated bidder was clearly within the ten working days provided by the law for administrative review period. Accordingly, the Tribunal therefore finds that there was serious breach of the PPDA Act, 2003 by the Respondent in respect of the impugned procurement on account that the Entity entered into a contract with a provider during the administrative review period in contravention of section 90 (7) (a) of the Act.

6.0 DECISION OF THE TRIBUNAL


1. The Tribunal makes a declaration that there was serious breach of the PPDA Act, 2003 by the Respondent in respect of the impugned procurement on account

that the Entity entered into a contract with a provider during the administrative review period.

2. In accordance with Section 91K (1) (d) of the PPDA Act, 2003, the Applicant is awarded costs of this Application to be taxed by the Registrar.

Dated at Kampala this day of3rd February..... 2020.


SIGNED by the said


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OLIVE ZAALE OTETE

CHAIRPERSON

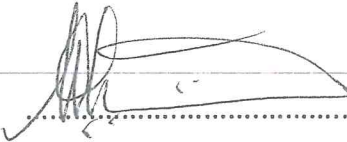
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ENG. THOMAS BROOKES ISANGA

MEMBER

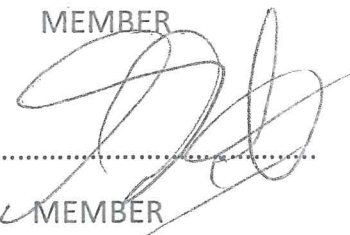
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DAVID KABATERAINE

MEMBER

SIGNED by the said


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ABRAHAM NKATA

MEMBER