

THE REPUBLIC OF UGANDA

**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS APPEALS TRIBUNAL
(PPDA APPEALS TRIBUNAL)**

APPLICATION NO 1 OF 2018

APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT TO PROCUREMENT OF REVENUE COLLECTION FROM DAY STREET PARKING JINJA MUNICIPAL COUNCIL REF: JMC755/Srvcs/17-18/00003

APPLICANT: GLOBE WORLD ENGINEERING (U) LTD

1ST RESPONDENT: PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY (PPDA)

2ND RESPONDENT JINJA MUNICIPAL COUNCIL

(Before: OLIVE ZAALE OTETE- CHAIRPERSON, MOSES JURUA ADRIKO-MEMBER, DAVID KABATERAINE-MEMBER, ARCHT. JOEL KATEREGGA-MEMBER AND ABRAHAM NKATA- MEMBER)

DECISION OF THE PPDA APPEALS TRIBUNAL

1.0 BRIEF FACTS

- 1.1 On 4th May 2017, Jinja Municipal Council (2nd Respondent) initiated the procurement for revenue collection for day street parking in Jinja Central Division. Four bidders namely Globe World Engineering (U) Ltd, Wijawa Enterprises, Lumuny Investments Ltd and Mayanja General Services Ltd submitted bids.
- 1.2 On 30th June 2017, the evaluation report indicated that Globe World Engineering (U) Ltd (Applicant) was eliminated at financial evaluation stage on grounds that its bid price was lower than that of Mayanja General Services Ltd, the best evaluated bidder (BEB). The evaluation committee recommended award of the tender to the BEB at a contract price of UGX 13,000,000. On 21st August 2017, the Contracts Committee approved the award and the Notice of Best Evaluated Bidder was displayed from 21st August 2017 to 4th September 2017.
- 1.3 On 21st August 2017, the Applicant, who came second after the BEB applied for administrative review to the Accounting Officer of the Second Respondent. The basis of the application for administrative review was that the BEB was ineligible as per the criteria in the bidding document; that the BEB was indebted to the second respondent by the time of submitting the bids, and that the certificate of clearance of indebtedness of the BEB was delivered to the 2nd Respondent on 28th August 2017, over three weeks after the bids were opened.

- 1.4 The Accounting Officer immediately suspended the procurement proceedings and constituted an administrative Review Committee to handle the complaint.
- 1.5 By letter dated 13th September 2017, the Accounting Officer informed the Applicant that the administrative review committee constituted by the Accounting Officer had found merit in the application for administrative review. By the same letter, the accounting officer communicated to the Applicant that the 2nd Respondent had recommended that the Applicant, M/S Globe World Engineering (U) Ltd who had been ranked as the second best evaluated bidder be awarded the contract.
- 1.6 By letter dated 21st September 2017, Mayanja General Services Ltd, the 1st BEB petitioned the Accounting Officer for an administrative intervention on grounds that the Administrative Review Committee constituted by the Accounting Officer to hear the Applicant's complaint did not give the BEB a hearing and thus condemned the BEB unheard. The BEB asked the Accounting Officer to quash the report of the administrative review committee.
- 1.7 By letter dated 27th October 2017 addressed to Mayanja General Services Co. Ltd, the BEB, the Accounting Officer informed the BEB that following its petition dated 21st September 2017, the Accounting Officer had constituted an administrative committee to handle its complaint and that this administrative review committee had found that the evaluation committee made an error in finding Mayanja General Services Co. Ltd responsive on the issue of indebtedness; and that the evaluation committee was also in error to find that the Applicant was responsive with respect to the issue of income tax clearance certificate. Accordingly, the

Accounting Officer informed Mayanja General Services Co. Ltd by this letter that the Committee did not find merit in their application and recommended that the procurement process be cancelled since no bidder had qualified for the financial evaluation stage.

- 1.8 Dissatisfied with this turn of events, the Applicant applied again to the Accounting officer for a review of his decision following a petition by the Mayanja General Services Co. Ltd.
- 1.9 On 29th November 2017, the Applicant applied to the 1st Respondent stating that 15 working days had expired since the Applicant applied to the Accounting Officer for a review of the Accounting Officer's second decision where he cancelled the procurement process but that the Accounting Officer had not made a decision within the requisite 15 working days. In the application to the 1st Respondent, the Applicant sought for orders that the Authority uphold the Applicant's administrative review victory announced by letter dated 13th September 2017 and that the contract be awarded to the Applicant. The application also sought the 1st Respondent to quash the decision of the Accounting officer following the BEB's petition on grounds that it was made after the 15 working days required by the PPDA Act.
- 1.10 In its decision dated 2nd January, 2018, the 1st Respondent upheld the application filed before it by the Applicant. The 1st Respondent advised the 2nd Respondent to re-evaluate the process if the bids are still valid and to refund the Administrative Review fees paid by the Applicant.
- 1.11 The Applicant was dissatisfied with the decision of the 1st Respondent hence this Application.

2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION

2.1 On 10th January 2018, the Applicant filed an application to the Tribunal challenging the Authority's decision.

2.2 The grounds for Application to the Tribunal can be summarized as follows:

(a) *The investigation by the Authority should have been limited to the issues raised by the Applicant in the application for administrative review;*

(b) *The Authority, having found as a fact that the report of the Accounting Officer following the petition by the BEB was null and void, should not have discussed the merits of that report, instead the Authority should have found that the first finding of the Accounting Officer contained in the letter of 13th September 2017 remained unchallenged and was valid, and should have therefore upheld the decision of the Town Clerk, instead of ordering for fresh bidding.*

3.0 DISPOSAL OF APPLICATION

3.1 In disposing of the Application for review, the Tribunal analyzed the following documents:

1) The Applicant's Application to the Tribunal dated 10th January 2018, annexes to the Application, the written and oral submissions.

2) The Authority's response to the Application dated 12th January 2018, annexes to the response, and the written and oral submissions.

3.2 The Tribunal conducted a hearing for the Parties on 25th January 2018. The Applicant was not represented by Counsel. The Authority was represented by Mr. John Kallemera. In attendance were representatives of the Applicant and Mr Waidhuba Jophram, Deputy Town Clerk, Jinja Municipal Council

4.0 **SUMMARY RULING**

4.1 In accordance with section 91I (7) of the PPDA Act, 2003, the Tribunal delivered a summary of this ruling on 30th January 2018. What follows is the detailed reasoning in support of the Tribunal's decision.

5.0 **ISSUES**

5.1 Three (3) issues were formulated for resolution by the Tribunal as follows:

(a) Whether the Authority erred in law and fact in advising the 2nd Respondent to re-evaluate the process, having found merit in all the Applicant's grounds and upholding its Application hence robbing the Applicant of victory.

(b) Whether the Applicant is entitled to award of tender as was decided by the Accounting Officer on 13th September 2017.

(c) Whether the Applicant is entitled to general damages and costs in the Tribunal and below.

6.0 **SUBMISSIONS BY COUNSEL**

6.1 The representative of the Applicant submitted on the first and second issues concurrently. He submitted that following the announcement by the 2nd Respondent of Mayanja General Services as the BEB, the Applicant filed an application for administrative review to the Accounting Officer, who by letter dated 13th September 2017 found merit in the application and declared the applicant as the BEB. He further stated that the Authority also found that the second report of the Accounting officer cancelling the procurement process was null and void since it was issued by the Accounting Officer outside the 15 working days allowed by the PPDA Act. He argued that having found the second report null and void, the Authority ought to have maintained that the first decision of the Accounting Officer

dated 13th September 2017 declaring the Applicant as the BEB was valid. He argued that it was wrong for the Authority to order the entity to re-tender the procurement process.

- 6.2 The Applicant's representative submitted that the Applicant is entitled to be awarded a tender as was decided by the Accounting Officer on 13th September 2017.
- 6.3 The Applicant prayed the Tribunal to award general damages and costs in the Tribunal and below.
- 6.4 In response, Counsel for the 1st Respondent, John Kallemera, who handled issues 1 and 2 concurrently submitted that the Authority is not vested with power under the PPDA Act to award a contract to a bidder, hence the reason it advised the entity to consider re-evaluating the bids if the bids were still valid. Counsel further submitted that the Authority advised a re-evaluation because the Accounting Officer had nullified the first administrative review decision and cancelled the procurement process.
- 6.5 Counsel prayed that the application be dismissed and each party bears its own costs.

7.0 **RESOLUTION BY THE TRIBUNAL**

- 7.1 The Tribunal resolved the two issues concurrently.
- 7.2 It is the case of the Applicant that having found null and void the report of the Accounting Officer that recommended cancellation of the procurement process, the Authority should have declared that the decision of the Accounting Officer dated 13th September in which the Applicant was recommended as the BEB should remain valid, but instead, the Authority recommended a re-evaluation of the bids.
- 7.3 The Authority has, on the other hand, argued that it has no power under the PPDA Act to award contracts to bidders; that award of contracts is the

mandate of the Contracts Committee after evaluation of bids is done. The Authority has also argued that a re-evaluation is necessary in this case because, the Accounting Officer in his second administrative decision cancelled the procurement process.

- 7.4 In resolving this issue, the Tribunal found the decision of the 1st Respondent in relation to the second administrative review decision of the Accounting Officer relevant. Following the decision of the Accounting Officer contained in a letter dated 13th September 2017 wherein the Applicant was recommended as the BEB, the Accounting Officer entertained another petition for administrative review by Mayanja General Services Limited which had been declared the BEB at first. The Authority in its decision dated 2nd January 2018 on this issue stated thus:

“The decision by the Accounting Officer with respect to the Application by Mayanja General Services Ltd dated 27th October 2017 was irregular since it was issued out of the stipulated statutory time of 15 working days. The Accounting Officer ought to have issued his decision by 18th October 2017.”

- 7.5 It is important to note that this second administrative review decision which the Authority found irregular for being issued outside the statutory time frame is the same decision that contained the Accounting Officer’s decision to cancel the procurement process. Yet strangely, in support of its advice to the 1st Respondent to re-evaluate the bids, the Authority states that it recommended re-evaluation because the procurement process was cancelled by the Accounting Officer.

- 7.6 The Tribunal finds that the procurement process in the instant procurement was never effectively cancelled because the decision that

purported to do so was found, correctly so, by the Authority to have been issued in contravention of the PPDA Act, 2003. This implies that the decision of the Accounting Officer dated 13th September 2017 wherein the Applicant was declared the BEB following a successful application for administrative review still stands.

7.7 The Tribunal finds that the issue of award of contract raised by the Authority does not arise. The 2nd Respondent had in its decision of 13th September 2017 already recommended award of contract to the Applicant. This decision, as the Tribunal has found, still remains valid because the decision of the Accounting Officer which claimed to overturn it was found to be contrary to the PPDA Act. The Authority cannot therefore talk of awarding a contract because the contract had already been awarded.

7.8 On the prayer by the Applicant to be awarded general damages and costs in the Tribunal and below, the Tribunal is not vested with power under the PPDA Act to award general damages. While the Tribunal may award costs, the Tribunal has chosen not to make any orders as to costs against both the 1st and 2nd Respondents.



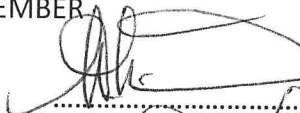
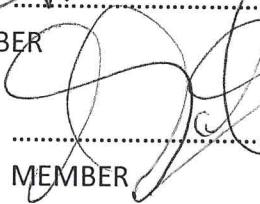
DECISION OF THE TRIBUNAL

1. The Application is allowed.
2. The Tribunal upholds the first decision of the Accounting Officer dated 13th September 2017 wherein the Accounting Officer recommended the Applicant, Globe World Engineering (U) Ltd to be awarded the contract.
3. In accordance with Section 91I (6) (c) of the PPDA Act 2003, the decision of the Authority dated 2nd January 2018 to the effect that the entity is

advised to re-evaluate the process is set aside. The entity is directed to continue and finalize the procurement process in implementation of the decision of the Accounting Officer dated 13th September 2018, if the bids are still valid.

4. The Tribunal affirms the decision of the Authority with respect to refund of administrative review fees to the Applicant.
5. No Orders to costs.

Dated this15th..... day ofMarch..... 2018.

SIGNED by]	
OLIVE ZAALE OTETE]	CHAIRPERSON
SIGNED by]	
MOSES JURUA ADRIKO]	MEMBER
SIGNED by]	
DAVID KABATERAINE]	MEMBER
SIGNED by]	
ABRAHAM NKATA]	MEMBER
SIGNED by]
ARCHT. JOEL KATEREGGA]	MEMBER