

**THE REPUBLIC OF UGANDA**  
**PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS**  
**APPEALS TRIBUNAL**  
**APPLICATION NO. 7 OF 2018**

ELEKTA LTD/ ELEKTA (PTY) LIMITED

===== APPLICANT

VS.

1. UGANDA CANCER INSTITUTE
2. PUBLIC PROCUREMENT AND DISPOSAL  
OF PUBLIC ASSETS AUTHORITY

} ===== RESPONDENTS

**Before:** MOSES JURUA ADRIKO SC (CHAIRPERSON), ABRAHAM NKATA AND DAVID  
KABATERAINE (MEMBERS)

**RULING**

**Brief Facts**

1. The facts of this application are that on 31<sup>st</sup> August, 2017 Uganda Cancer Institute advertised a procurement under African Development Bank funding for supply delivery, installation and commissioning of Linear Accelerator system (Lot 1) and positioning, Aids and Dosimetry Equipment (Lot 2) with a deadline for submission of 10<sup>th</sup> October, 2017 revised to 03<sup>rd</sup> November, 2017.
2. At closure of Bid Submission on 03<sup>rd</sup> November, 2017 only two firms submitted bids which were opened the same day i.e. Elekta Ltd/Elekta (Pty) Limited and Elsmmed Healthcare Solutions.
3. On 9<sup>th</sup> November, 2017, the Evaluation Committee sought clarification of the bid price from Elsmmed Healthcare Solutions Limited because the bidder's price schedule and letter of bid contained divergent information on its bid price in the Price Schedule and the Letter of Bid'. Elsmmed clarified that all its bid prices were in US Dollars.
4. The Evaluation Report of 13<sup>th</sup> November, 2017 indicated both bidders as responsive at Preliminary and Commercial Evaluation stages. The applicant's bid for both lots were however found non - responsive at Technical Evaluation stages for the following reasons: (As reflected in the Best Evaluated Bidder (BEB) Notice).

- i) Did not fully comply with the purchasers' requirements as described in the Detailed Technical Specifications and Related Services.
  - ii) Did not provide a declaration that Bidder is the manufacturer yet no letter of manufacturer's authorisation submitted.
  - iii) The CVs and Certificates of the Engineers and Application Specialists did not show evidence of manufacturer training in the model of Linear Accelerator and Treatment Planning system offered.
  - iv) Although manufacturer training certificates were submitted for some Engineers, CVs for the same were not submitted.
  - v) Did not provide an acceptable After Sales Service Proposal
  - vi) Did not provide On-site and Off-site Advanced Training Proposal.
5. The Evaluation Committee recommended award for both lots to Elsmed Healthcare Solutions Limited and the Contracts Committee in turn awarded the contract to Elsmed Healthcare Solutions Limited as BEB. A notice of BEB was displayed from 6<sup>th</sup> to 20<sup>th</sup> February, 2018.
  6. On 19<sup>th</sup> February, 2018 the applicant complained to the Entity's Accounting Officer and requested for Administrative Review which was ignored.
  7. On 2<sup>nd</sup> March, 2018 the contract for both lots were approved by Solicitor General and on 20<sup>th</sup> March, 2018 the contract for both lots were signed between the Entity and Elsmed Healthcare Solutions Limited.
  8. On 22<sup>nd</sup> March, 2018 the applicant complained to the Authority which was rejected. On 23<sup>rd</sup> April, 2018 hence this appeal filed before the Tribunal on 02<sup>nd</sup> May, 2018.

#### **Grounds of application**

1. The Entity (Uganda Cancer Institute) signed the contract illegally during the Administrative Review period.
2. The Public Procurement and Disposal of Public Assets Authority (PPDA) erred in fact and law when it found that the applicant did not materially comply with the technical specifications and related services.
3. PPDA erred in failing to take into account the relevant procurement principles particularly (value for money).

When the matter came up for hearing on 15<sup>th</sup> May, 2018, the Tribunal posed preliminary questions for consideration by the parties as follows;-

- a) Why the 1<sup>st</sup> Respondent delayed to file its response to the instant application despite having been served in time
- b) The current status of the procurement process
- c) Locus standi of the applicant.
- d) Jurisdiction of the Tribunal.

Sam Byamukama for the 1<sup>st</sup> Respondent apologised for the delayed response and informed the Tribunal that the delay was not deliberate but rather they were waiting for legal representation from the office of the Attorney General which took some time. He also informed the Tribunal that the procurement process ended on 20<sup>th</sup> March, 2018 when a contract was signed between the 1<sup>st</sup> Respondent and Best Evaluated Bidder (Elsméd Healthcare Solutions Limited).

John Kallemera for 2<sup>nd</sup> Respondent submitted that all bids expired on 5<sup>th</sup> April, 2018 before the application was lodged with the Tribunal. Mr Kallemera also submitted that by the time the Applicant filed this application, they had ceased being a bidder under S. 91 I (1) and 3 of the Public Procurement and Disposal of Public Assets Act, 2003 and accordingly they had no locus standi in the matter. He cited five decisions of this Tribunal on a similar matter to wit; **Application No. 16 of 2015 Kazini Frederic vs. PPDA**, among others in which the Tribunal held inter alia that; *“Once the bid validity expires, the procurement process comes to an end.* He prayed that the application be struck out with no orders to costs.

In response to the submissions made by Counsel for the 2<sup>nd</sup> Respondent, Counsel for the Applicant, Mr Alexander Kibandama conceded to the fact that indeed the applicant was not a bidder within the meaning of the Act at the time of filing the application. He however implored the Tribunal to entertain the application under S. 91 I (3) of the Act which allows any person adversely affected by a decision of the Authority to seek administrative review. In reply Counsel for the 2<sup>nd</sup> Respondent objected to the submissions and prayer for consideration of the appeal under section 91I (3) of the Act. He submitted that the application before the Tribunal could only and strictly be treated as an appeal by a bidder whose bid expired having regard inter-alia to the pleadings filed by the Applicant, as well as the administrative process which took place at PPDA from which the instant appeal emanated.

Having heard from all the parties on the preliminary matters, the Tribunal finds that the applicant at the time of filing the instant application on 2<sup>nd</sup> May, 2018 ceased being a bidder after their bid expired on 5<sup>th</sup> April 2018, the effect of expiry of their bid renders this application incompetent because the Applicant has no locus standi, before the Tribunal. We note that the Applicant’s bid expired prior to the filing of this appeal after the 1<sup>st</sup> Respondent opted not to invite the Applicant to renew its bid. We also take note

that the 2<sup>nd</sup> Respondent has filed a reference with the Tribunal complaining about certain alleged acts and omissions of the 1<sup>st</sup> Respondent.

The Tribunal finds that based on the facts above and having regard to previous decisions on the status of expired bids in particular, **Application No. 16 of 2015 Kazini Frederic vs. PPDA** as cited by Counsel for the 2<sup>nd</sup> Respondent; it has no jurisdiction to entertain the instant application.

Accordingly this Application is struck out with no orders to costs. Any party aggrieved by this decision may exercise its right of appeal within 30 days of the date hereof.

SIGNED BY:

MOSES JURUA ADRIKO



.....  
CHAIRPERSON

ABRAHAM NKATA



.....  
MEMBER

DAVID KABATERAINE



.....  
MEMBER

*Dated: 15<sup>th</sup> May, 2018*