

THE REPUBLIC OF UGANDA

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

APPLICATION NO 20 OF 2018

APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT TO THE TENDER FOR THE CONSTRUCTION OF THE PROPOSED HEADQUATER BUILDING OF THE INSPECTORATE OF GOVERNMENT PLOT 71-75 YUSUF LULE ROAD AND 24-26 CLEMENT HILL ROAD KAMPALA UGANDA PROC REF IG/WRKS/2017-2018/0001

APPLICANT: INSPECTORATE OF GOVERNMENT

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

2ND RESPONDENT: CRJE (EAST AFRICA) LTD

(Before: OLIVE ZAALE OTETE-CHAIRPERSON, DAVID KABATERAINE-MEMBER, ABRAHAM NKATA- MEMBER)

DECISION OF THE PPDA APPEALS TRIBUNAL

1.0 **BRIEF FACTS**

- 1.1 On 12th April 2018, the Inspectorate of Government (the Entity) advertised for the construction of its proposed headquarters building in the New Vision Newspaper with a deadline submission of bids on 10th May 2018.
- 1.2 On 10th May 2018, five firms submitted bids which were opened and prices read out as follows; M/s Seyani Brothers & Co. (U) Ltd & Parbat Siyani Construction Ltd UGX 89,915,920,986 VAT inclusive, M/s China Wu Yi Co. Ltd UGX 96,024,787,218 VAT inclusive, M/s China National Aero Technology International Engineering Corporation (CATIC) UGX 78,535,684,925 VAT inclusive, M/s CRJE (East Africa) Ltd UGX 81,535,684,925 VAT inclusive and M/s Roko Construction Ltd & Roko Construction (Rwanda) Ltd JV (the Applicant), UGX 74,313,092,184 VAT inclusive.
- 1.3 The Evaluation Committee recommended award to the Applicant at UGX 74,313,092,184 VAT inclusive. On 1st June 2018, the Contracts Committee approved the Evaluation Committee recommendation and awarded the contract to the Applicant at UGX 74,703,912,383 VAT inclusive.
- 1.4 On 1st June 2018, the Entity displayed the Notice of the Best Evaluated Bidder with a removal date of 14th June 2018.
- 1.5 On 13th June 2018, the 2nd Respondent applied for administrative review to the Accounting Officer. The Accounting Officer issued administrative review decision rejecting the Application for administrative review. Being dissatisfied with the decision of the Accounting Officer, the 2nd Respondent applied for administrative review to the Authority.
- 1.6 The Authority held a hearing on 19th July 2018 and on 6th August 2018, issued a decision wherein it upheld two of the seven grounds contained in the Application by the 2nd Respondent and directed the Entity to re-evaluate the bids taking into consideration the 1st Respondent's findings on computation of the values of the works completed by Roko on Acacia Commercial Hotel and Development in Rwanda, whose value was below the required UGX 90 billion at date of completion.

1.7 Being dissatisfied with the decision and recommendations of the 1st Respondent, the Applicant filed this Application with the Tribunal challenging the Authority's decision.

2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION

2.1 On 22nd August 2018, the Applicant filed an application to the Tribunal challenging the Authority's decision.

2.2 The issues on which the Applicant sought a decision of the Tribunal were as follows:

- i. Whether the Authority was justified to order a re-evaluation or uphold the two grounds of the 2nd respondent's Application, when the 2nd respondent abandoned the administrative review process after being called upon to substantiate their submissions about Engineer Frederick Mubiru and disclose their sources of information during the 2nd hearing on 26th July 2018.
- ii. Whether the Authority had a duty, and neglected such duty, to demonstrably consider the peculiar background of the procurement, particularly the history of the attempts by bidders to pervert the integrity of the process, in arriving at their decision.
- iii. Whether having given the best evaluated bidder (Roko) the opportunity to be heard and cross examined on the matters adversely affecting them in the application by CRJE, the Authority had an absolute and non-derogable obligation to demonstrably consider their submissions and tendered evidence before making decisions and recommendations that affected Roko adversely.
- iv. Whether the Authority had a duty, and neglected such duty, to demonstrably and thoroughly examine and adjudicate the matter raised by the Applicant that the 2nd Respondent had tendered submissions and evidence that amounted to an admission that they had accessed confidential and privileged information of other bidders, which information they had used to influence or pervert the procurement process, which was both unethical and criminal.
- v. Whether the Authority was justified in discarding or ignoring the evidence and submissions of the PDE and BEB justifying the use of the rate as at bid opening

and or evidence that the value as at completion combined with the Bank of Uganda rate then, respectively, was above UGX 90bn for the impugned project, rendering the BEB compliant; and without offering any substantiation for the Ruling that the rate to be applied ought to have been that of the Bank of Uganda on 11th July 2016, and declaring the BEB's project thus non-compliant.

- vi. Whether the Authority had any plausible grounds to order the PDE to re-evaluate the bids, and to, for all intent and purposes, disqualify the BEB, without according them fair hearing on the matter or alternatively, without taking into consideration their submissions, before issuing the adverse ruling to disqualify them.
- vii. Whether the Authority was justified in seemingly taking on the mandate of the Evaluation Committee and issuing directives which have the effect of curtailing the discretionary evaluation powers of the Evaluation Committee by dictating which bidder to disqualify and which bidder to deem eligible; or whether the Authority should have stopped at rendering a decision on admissibility of the documents and values, and returned the bids for fresh evaluation, as sought by the Applicant.

2.3 The Applicant prayed that the Tribunal, upon resolution of the issues above, makes the following declarations, orders and directives as corrective actions:

- i. That the Acacia Commercial Development Project submitted by the BEB (Roko) in fulfilment of the specified experience meets the minimum requirement of having a value above UGX 90 billion at completion.
- ii. That the Entity did not refuse to submit information to the 2nd Respondent pursuant to section 89 (2) of the Act.
- iii. That the Authority erred in upholding any of the grounds of an applicant that had abandoned their application, and been found ineligible for submitting a noncompliant power of attorney, and the applicant stands dismissed.
- iv. That the Authority erred in disregarding the evidence submitted by the BEB, but making a decision adverse to them and the PDE, and such decision stands quashed for offending the rules of natural justice.

- v. That the Authority erred in failing to pursue and adjudicate the issue of the CRJE's admitted unethical and unlawful access and use of confidential bidders' information, and the matter should be appropriately investigated, and the culprits sanctioned.
- vi. That the Authority erred in taking over the mandate of the Evaluation Committee by dictating that a bidder deemed non-compliant (CRJE) be re-evaluated, while the BEB considered non-complaint, even before the decreed re-evaluation is carried out.
- vii. That the decision of the Authority to uphold two of the grounds of CRJE and order a re-evaluation and refund of administrative review costs is quashed; and in its stead, the decision of the Entity declaring Roko the BEB is affirmed, execution of the contract between the Entity and the BEB ordered, and that the administrative fees be forfeited.
- viii. That the Respondents be ordered to pay costs and damages as deemed appropriate by the Tribunal.

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 22nd August 2018, annexes to the Application, the written and oral submissions.
- 2) The Authority's response to the Application dated 27th August 2018, annexes to the response, and the written and oral submissions.

3.2 The Tribunal conducted a hearing for the Parties on 5th September 2018. The Applicant was represented by Ms. Pauline Nansamba; the 1st Respondent was represented by Mr. John Kallemera. The 2nd Respondent was represented by In attendance were representatives of the Applicant.

5.0 ISSUES

5.1 The issues for determination by the Tribunal were the same issues outlined in paragraph 2.2 above.

6.0 SUBMISSIONS BY COUNSEL

6.1 Counsel for the 1st Respondent raised a preliminary matter in respect of which, he sought guidance of the Tribunal before Counsel could make submissions on the issues. He stated that the decision of the Tribunal in *Roko Construction Ltd & Roko Construction (Rwanda) Ltd JV versus Public Procurement and Disposal of Public Assets Authority and CRJE (East Africa) Ltd, Application 17 of 2018* and in *Roko Construction Ltd & Roko Construction (Rwanda) Ltd JV versus Public Procurement and Disposal of Public Assets Authority and Seyani Brothers and Co (U) And Parbat Siyani Construction Ltd, Application 18 of 2018* effectively cancelled the procurement process of the Entity because the Tribunal in both decisions advised the Entity to re-tender the procurement, if it so wished. Counsel submitted that the instant Application was on all fours with Applications 17 and 18 of 2018. He stated that the current application was affected by the Tribunal orders on the aforesaid decisions. Counsel sought guidance as to whether the Tribunal should proceed to hear this Application or adopt its orders in Applications 17 and 18 of 2018, with the necessary modifications.

6.2 Counsel for the Applicant submitted that she had no objection to the guidance sought by Counsel for the 1st Respondent. Similarly, Counsel for the 2nd Respondent agreed with both Counsel and stated that the instant Application was overtaken by the events and orders pronounced by the Tribunal in Applications 17 and 18 of 2018.

7.0 RESOLUTION BY THE TRIBUNAL

7.1. The Tribunal is in agreement with the submissions of Counsel that the instant Application is on all fours with Applications 17 and 18 of 2018 and is thus affected by the orders of the Tribunal made in those Applications and therefore abates and abides the orders in Applications 17 and 18.

8.0 DECISION OF THE TRIBUNAL

1. This Application abates because the issues in contention have been substantively resolved in Applications 17 and 18 of 2018 in respect to the same procurement.

2. Each Party shall bear its own costs.

SIGNED and sealed this ¹⁵ day of ¹⁰....., 2018 by the said

OLIVE ZAALE OTETE



CHAIRPERSON

ABRAHAM NKATA



MEMBER

DAVID KABATERAINE



MEMBER