

**THE REPUBLIC OF UGANDA**

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

**APPLICATION NO 21 OF 2018**

APPLICATION FOR ADMINISTRATIVE REVIEW IN RESPECT TO THE  
PROCUREMENT OF SUPPLY AND INSTALLATION OF A RECORDING SYSTEM FOR  
PPDA APPEALS TRIBUNAL UNDER PROCUREMENT REF. No: MoFPED/SUPLS/17-  
18/00597

**APPLICANT:** INTERNATIONAL BUSINESS SOLUTIONS LIMITED

**RESPONDENTS:** 1. PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS  
AUTHORITY  
  
2. MINISTRY OF FINANCE, PLANNING AND ECONOMIC  
DEVELOPMENT

**(QUORAM:** OLIVE ZAALE OTETE- CHAIRPERSON, MOSES JURUA ADRIKO SC- MEMBER,  
DAVID KABATERAINE-MEMBER, ABRAHAM NKATA- MEMBER)

## **DECISION OF THE PPDA APPEALS TRIBUNAL**

### **1.0 BRIEF FACTS**

- 1.1 On 25<sup>th</sup> April 2018, the Ministry of Finance Planning and Economic Development (MoFPED) (the Entity) issued out a Request for Quotation document to four providers namely; International Business Solution Ltd (the Applicant), Teltec Investments Ltd, Access IT Ltd and Serena Quality Services for the procurement for a recording system for PPDA Appeals Tribunal.
- 1.2 On 27<sup>th</sup> April 2018, three firms submitted their bids and these were opened and prices read out as follows; International Business Solution Ltd UGX 173,309,071, Teltec Investments Ltd UGX 164,643,857 and Access IT Ltd UGX 189,895,630.
- 1.3 The Evaluation report dated 11<sup>th</sup> May 2018, which was submitted to the Contracts Committee for approval indicated that all the bidders passed the preliminary examination and were technically responsive.
- 1.4 The Evaluation Committee recommended award of the contract for procurement of recording system for PPDA Appeals Tribunal to Teltec Investments Ltd. The Contracts Committee approved the recommendation of the Evaluation Committee and awarded the contract for procurement of recording system for PPDA Appeals Tribunal to Teltec Investments Ltd at UGX 164,643,857.
- 1.5 On 17<sup>th</sup> May 2018, the notice of the best evaluated bidder was displayed with an expiry date of 30<sup>th</sup> May 2018.
- 1.6 On 14<sup>th</sup> June 2018, the Applicant filed complaint to the Accounting Officer challenging the impugned procurement process. On 2<sup>nd</sup> July 2018, the Accounting Officer rejected the complaint for administrative review.
- 1.7 On 16<sup>th</sup> July 2018, International Business Solution Ltd, filed a complaint to the Authority challenging the Accounting Officer's decision. On 14<sup>th</sup> August 2018, the Authority rejected the Applicant's complaint for administrative review.

## **2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION.**

2.1 On 24th August 2018, the Applicant being dissatisfied with the Authority's decision filed this Application before the Tribunal challenging the Authority's decision.

2.2 The grounds/issues for the Application to the Tribunal were:

**Issue No. 1:** Whether the Applicant was the only bidder that submitted a valid bid before the bid submission deadline for the impugned procurement.

**Issue No.2:** Whether the bidders were required to submit a letter of Manufacturer's authorization for the impugned procurement.

**Issue No.3:** What remedies are available?

## **3.0 DISPOSAL OF APPLICATION**

3.1 The Tribunal analyzed the following documents:

- (1) The Applicant's Application to the Tribunal, Annexes to the Application, the written and oral submissions.
- (2) The Authority's response to the Application, Annexes to the response and oral submissions.

3.2 The Tribunal conducted a hearing for the Parties on 7<sup>th</sup> September, 2018. The Applicant was represented by its Director Mr. Savio Martins. The 1<sup>st</sup> Respondent was represented by its Manager Legal, Mary Akiror. The 2<sup>nd</sup> Respondent was represented by its Head Procurement and Disposal Unit, Mr. Crescent Muhumuza, Nabulime Amina and John Nanyumba all Procurement Officers of the 2<sup>nd</sup> Respondent. Teltec Investments Ltd the Best Evaluated Bidder upon invitation was also represented by Ndagire Miriam, a Sales Manager.

## **4.0 Submissions by the Applicant**

4.1 **Issue 1 was whether the Applicant was the only bidder that submitted a valid bid after the bid submission deadline for the impugned procurement.** Mr. Savio informed the Tribunal that the Applicant's bid was delivered at the 2<sup>nd</sup> Respondent's office on 27<sup>th</sup> April, 2018 at 09:45 am as the only first and last bid till bid submission time of 10:00 am. The

lady who submitted in the Applicant's bid was called to confirm Savio's assertion that no other bids had been submitted by the deadline time of closure. She informed the Tribunal that she submitted the bid at 09:45 am but was given a sheet to sign after 10:00 am. She recorded the time she arrived at the offices not the time she was given the form to fill and sign to avoid the Applicant's bid being rejected as late submission. She also said she never saw any other bidders bringing in their bids by the time she left. Savio's prayer was that the Tribunal finds that the only bid submitted within time was that of the Applicant.

#### **4.2 Issue 2 was whether the bidders were required to submit a letter of authorization for the impugned procurement.**

Mr. Savio stated that the Bidding Document did not ask bidders for Manufacturer's authorization Letter as a requirement for eligibility but was quick to add that in the solicitation document issued to the bidders for the impugned procurement, the bidders were at liberty under item 7 of the 'Documents Evidencing Eligibility to submit any other documentation. He submitted that the other documents could pass to mean manufacturer's authorization as is the general practice in public procurement tenders in Uganda.

He further submitted that the Best Evaluated Bidder stated in its bid that it intends to pick its hardware from its partner StormSoft who is an FTR authorized agent which required either a teaming agreement with StormSoft or a consortium joint venture to be eligible without manufacturer's authorization.

With respect to the manufacturer's authorization submitted by the best evaluated bidder Teltec, Mr. Savio stated that he had proof that two of the Manufacturer's authorization letters from Lenovo East Africa Limited and StormSoft Computer Solutions Uganda Limited were not authentic because they lacked the name of the addressee, dates and the specific subject of procurement which is the normal practice of the manufacturers while the other from RedDot Distribution Ltd was an old document not meant for the questioned procurement. He prayed that the procurement process be cancelled and retendered because of lack of fairness and transparency in the whole process.

#### **5.0 Submissions by 1<sup>st</sup> Respondent**

5.1 Mary Akiror maintained arguments in the 1<sup>st</sup> Respondent's written submissions that the first ground/issue be disregarded by the Tribunal on ground that such was not an issue



both at the Entity and at the Authority levels during administrative review hearing.

- 5.2 Mary submitted that the Bidding (RFQ) Document did not include a requirement for the Bidders to submit manufacturer's authorization and that therefore the Evaluation Committee was right in their evaluation which was in line with the criteria stipulated in the Bidding document and in accordance with **Regulation 7 (1) and (2) of PPDA (Evaluation) Regulations 2014 Statutory Instrument No. 9 of 2014.**

With regard to the authenticity and accuracy of information submitted by the Best Evaluated Bidder through what the Applicant termed "forged" manufacturer's authorization from Lenovo East Africa Limited and Red dot Distribution Ltd, such an allegation could only stand after an investigation has been carried out by the Authority and could not therefore be relied upon to cancel the procurement process. Counsel asked the Tribunal to resolve this issue/ ground in the negative as well and be pleased to dismiss the application.

#### **6.0 Submission by 2<sup>nd</sup> Respondent**

- 6.1 It was the submission of Crescent Muhumuza that the three bids received were submitted before 10:00 a.m at the time for bid submission closure. The three bidders submitted their bids in the presence of authorized officers who accordingly signed Form 11. He disputed what the representative of the Applicant stated that he was the only one that submitted a bid before closure time.
- 6.2 He associated himself with submissions of PPDA on the issue of whether Manufacturer's authorization was a requirement for eligibility and asked the Tribunal to dismiss the application which was a waste of time.

#### **7.0 Remarks by Best Evaluated Bidder, Teltec Investment Ltd**

The Best Evaluated Bidder was not a party to the application but was invited to be in attendance owing to the fact that the decision in the matter would affect it in one way or the other. Its representative, Ndagire Mariam stated; that all the documentation the Applicant allege to be forged were authentic. She was ready for an investigation to be conducted and to face consequences in case the Best Evaluated Bidder was found in breach of the code of ethics.

It was her contention that any company was free to deal with FTR as against what the Applicant had stated that he was the only authorized dealer of FTR to supply in Uganda. She further stated that her firm's representative submitted its bid before 10:00 a.m., the deadline time for submission of bids on 2th April, 2018.

## 8.0 Resolution by the Tribunal

The Tribunal will handle the issues in the same manner as argued by the Parties.

### 8.1 Issue 1. *Whether the Applicant was the only bidder that submitted a valid bid before the bid submission deadline for the impugned procurement.*

Before the Tribunal resolves this issue, we need to address our mind to the argument raised by Counsel for the 1<sup>st</sup> respondent that the ground be disregarded because it was not raised at the Entity and Authority levels during administrative review. This argument is not true because the complaint by the Applicant to the Accounting Officer alludes to it in its introduction. This is specifically found in paragraph 1.5 of the Applicant's application to the Accounting Officer. We shall therefore address our mind to the ground and its merits in our decision.

Form 11 is the Record of Bids Received. The form on record has entries of three bids that were submitted before the closing time of 10:00 a.m on 27th April, 2018. According to Form 11, confirmation that bidding closed at the deadline for submission of bids was witnessed by Nabulime Aminah and Obed Byarugaba. These officers were authorized officers under **Regulation 59 (7) of PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014 Statutory Instrument No. 8 of 2014**. The Applicant submitted its bid first at 09:45 a.m, while Teltec Investment Ltd and Access IT Ltd submitted their bids at 09:46 a.m. and 09:50a.m respectively. The argument by Mr. Savio and his employee who delivered the bid is not backed by any evidence other than their statements which directly contradicts Form 11. **Section 91 of the Evidence Act Cap 43**, precludes admission of oral evidence to contradict documentary evidence and we therefore will not evaluate the oral evidence of the Applicants employee which directly contradicts the time given in Form 11.

The Tribunal finds that three bids were received by the Entity for the impugned procurement. This ground is therefore rejected and accordingly fails.

## **8.2 Issue 2. *Whether the bidders were required to submit a letter of authorization for the impugned procurement.***

According to **Regulation 7 (1) PPDA (Evaluation Regulations) 2014, Statutory Instrument No. 9 of 2014**, evaluation of a bid is conducted in accordance with the evaluation criteria stated in the **PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014** and in the Bidding Document.

**Regulation 7 (2) of SI No. 9 of 2014** further states that:

*“an evaluation committee shall not during an evaluation make an amendment or addition to the evaluation criteria stated in the bidding document, and shall not use any other criteria other than the criteria stated in the bidding document.”*

It is not disputed by the Applicant that the Bidding Document did not include an instruction to bidders that a Manufacturer’s authorization letter was a requirement for bidders’ eligibility. The bidding document only stipulated a User Guide Manual and other relevant documents as a requirement which did not translate into Manufacturer’s authorization as the Applicant implies.

Basing on the legal provisions cited, and the wording in the bidding document, the Tribunal finds that the evaluation by the Evaluation Committee was in compliance with the criteria in the Bidding Document. A Manufacturer’s authorization letter was not part and parcel of the Documents evidencing eligibility and evaluation criteria and failure to consider such can not affect the process of determining the Best Evaluated Bidder. This ground is also resolved in the negative.

## **8.3 Issue No.3: *What remedies are available?***

After resolving the first two issues in the negative, this Tribunal is left with no other remedy to the parties other than dismissing the whole application.

## **8.4 Decision of Tribunal**

1. The application is accordingly dismissed
2. The decision of the Authority is upheld and,
3. Each party shall bear own costs.



**Obiter - Dictum**

*During the hearing of this application, a matter concerning violation of Code 4 (1) of **The Code of Ethical Conduct in Business for Bidders and Providers** was raised by the Applicant against Teltec Investment Ltd, the Best Evaluated Bidder with regard to authenticity of the Manufacturer's authorization letters submitted as part of its bid in this procurement process although such were not a requirement. The Tribunal observes that such an allegation of misconduct is grave and should be investigated by the Authority and appropriate action taken.*

SIGNED by  
OLIVE ZAALE OTETE

] .....  
] **CHAIRPERSON**

SIGNED by  
MOSES JURUA ADRIKO SC.

] .....  
] **MEMBER**

SIGNED by  
DAVID KABATERAINE

] .....  
] **MEMBER**

SIGNED by  
ABRAHAM NKATA

] .....  
] **MEMBER**

*Dated 10<sup>th</sup> September, 2018*

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