

**THE REPUBLIC OF UGANDA**

IN THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS  
APPEALS TRIBUNAL AT KAMPALA  
APPLICATION NO.16 OF 2017

GEM ALLIED INDUSTRIES PRIVATE LIMITED ===== APPLICANT  
VS.  
1. PUBLIC PROCUREMENT AND DISPOSAL }  
OF PUBLIC ASSETS AUTHORITY. } ===== RESPONDENTS  
2. UGANDA DEVELOPMENT CORPORATION }

**DECISION OF THE TRIBUNAL**

**1.0 BRIEF FACTS**

1. On 26<sup>th</sup> August 2016, Uganda Development Corporation (UDC) initiated a procurement process for the supply and installation of the Cut Tear and Curl (CTC) machinery for Kayonza Tea Factory.
2. On 5<sup>th</sup> September 2016, the contracts committee approved the open international bidding procurement method and on 22<sup>nd</sup> September 2016, the UDC advertised the procurement in the New Vision Newspaper.
3. On 26<sup>th</sup> October 2016, bid submission was closed and record of bids received as stated in Form 11 provided that the Entity received nine bids which were evaluated.
4. On 9<sup>th</sup> December 2016, the Contracts Committee identified anomalies in the Evaluation Report and requested a further review by the Evaluation Committee.
5. On 8<sup>th</sup> June 2017, the Contracts Committee approved the award to Mesco Equipment Ltd at a total price of USD 996,651 exclusive of taxes.
6. The notice of the Best Evaluated Bidder was displayed from 8<sup>th</sup> June 2017 to 21<sup>st</sup> June 2017.

7. On 16<sup>th</sup> June 2017, Gem Allied Industries Private Limited applied for Administrative Review before the Accounting Officer of the 2<sup>nd</sup> Respondent which was rejected by the Entity on 4<sup>th</sup> July 2017.
8. On 14<sup>th</sup> July 2017, Gem Allied Industries Private Limited applied for Administrative Review before the Authority on two grounds that; (1) the Evaluation Committee reduced the bid price of Mesco Equipment Ltd through alleged correction of arithmetic errors to bring the price of the recommended company slightly below the complainant's offer and (2) that Mesco Equipment Ltd has never installed and commissioned anywhere in the world a continuous chemical withering and continuous physical withering machinery and vibratory fluid bed drier of capacity 600kgs/hr made tea.
9. The Authority rejected the Applicant's complaint. The Applicant being dissatisfied with the decision of the Authority filed this Application before the Tribunal on 28<sup>th</sup> August 2017 challenging the Authority's decision on grounds that it arbitrarily changed the evaluation criterion from DDP to exclusive of taxes and that the Authority refused to give access to administrative review documents.

## **2.0 ISSUES**

**Issue No.1:** Whether the Authority erred in law and fact to uphold the arbitrary change of the evaluation criterion stipulated in the tender document to exclusive of taxes by the Evaluation Committee?

**Issue No. 2:** Whether the Authority denied the Applicant access to administrative review documents which the Applicant is legally allowed to obtain under the PPDA law?

**Issue No. 3** Whether the Authority erred in law and fact to uphold that Mesco Ltd had the relevant experience in continuous chemical withering machinery or continuous physical withering machinery and vibratory fluid bed drier of 600kgs/hr capacity?

**Issue No. 4:** What remedies are available to the parties?

In the course of hearing this application, the Tribunal inquired into the issue of validity of bids of the impugned procurement activity. The Entity informed the Tribunal that according to the request for bid extension sent to all bidders, the period of bid validity as specified expired by 31<sup>st</sup> April, 2017.

In the course of hearing this application, the Senior Procurement Officer of the Entity informed the Tribunal that the BEB extended its bid validity for a longer period than the period requested by the Entity, and that therefore the bid of the BEB was still valid.

Regulation 52 (5) of PPDA (Rules and Methods for Procurement of Supplies, Works and Non-Consultancy Services) Regulations, 2014/SI No. 8 of 2014 provides that where an extension to the bid validity period becomes necessary, a bidder shall be requested in writing, before the expiry of validity of their bid, to extend the validity for a specified period to complete the process outlined in sub-regulation (3).

The Entity in its letter dated 2<sup>nd</sup> January 2017 requested all bidders to extend their bid validity period from 31<sup>st</sup> January- 30<sup>th</sup> April 2017.

The Tribunal finds therefore that the purported longer bid validity extension by the Best Evaluated Bidder to 30<sup>th</sup> September 2017 was contrary to the provisions of the law because all bids expired by 31<sup>st</sup> April 2017.

### **3.0 DECISION OF THE TRIBUNAL**


This decision has been prepared in compliance with section 91I (7) of the Public Procurement and Disposal of Public Assets Authority Act, 2003.

The Applicant brought this action when the period of bid validity for all the bids including the bid for the Best Evaluated Bidder as specified by the Entity expired on 31<sup>st</sup> April, 2017. Under **Section 3** and **91I** of the PPDA Act, 2003 the Applicant and all other bidders had ceased being a bidder and therefore the Applicant lacked *locus standi* to file the application before the Tribunal.


The application is incompetent and is accordingly struck out with no orders to costs.

SIGNED and sealed this 12<sup>th</sup> day of September, 2017 by the said

OLIVE ZAALE OTETE

  
.....  
CHAIRPERSON

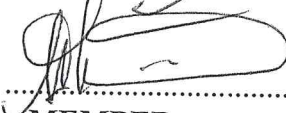
MOSES JURUA ADRIKO

  
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MEMBER


ABRAHAM NKATA

  
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MEMBER

DAVID KABATERAINE

  
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MEMBER

ARCHT JOEL KATEREGGA

  
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MEMBER