

**THE REPUBLIC OF UGANDA**

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

**APPLICATION NO 6 OF 2016**

**IN THE MATTER OF AN APPLICATION FOR ADMINISTRATIVE REVIEW BY ABAMWE  
TRANSPORTERS COOPERATIVE SOCIETY TO REVIEW THE DECISION OF THE PUBLIC  
PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT OF THE  
TENDER FOR MANAGEMENT AND COLLECTION OF USER FEES FOR NTUNGAMO  
TAXI PARK PROCUREMENT REF: NTUN775/SERVS/15-16/00005**

**APPLICANT: ABAMWE TRANSPORTERS CO-OPERATIVE SOCIETY LTD**

**AUTHORITY: PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS  
AUTHORITY.**

**(Before: OLIVE ZAALE OTETE- CHAIRPERSON, MOSES JURUA ADRIKO-MEMBER,  
ARCHITECT JOEL KATEREGGA-MEMBER)**

## DECISION OF THE PPDA APPEALS TRIBUNAL

### 1.0 BRIEF FACTS

1.1 Ntungamo Municipal Council hereinafter "The Entity" initiated the procurement for the management and collection of users fees from its Taxi Park vide Procurement reference number Ntun775/Servs/15-16/00005. Two (2) bids were received from Ntungamo Taxi Owners & Drivers Association and Abamwe Transporters Cooperative Society. Ntungamo Taxi Owners and Drivers Association hereinafter "the BEB" "were evaluated as the best evaluated bidder (BEB) while Abamwe Transporters Association, hereinafter "the applicant" "were declared the unsuccessful bidder for reason that they had "presented a cheque from Post Bank instead of a Bank Draft in the Best Evaluated Bidder Notice dated 27<sup>th</sup> May 2016.

1.2 Being dissatisfied with the decision of the Entity, the applicant filed an application for administrative review to the Accounting Officer; who in accordance with the Public Procurement and Disposal of Public Assets Act 2014 as amended (The Act) appointed a committee headed by the Principal Treasurer to investigate the complaint. In their report dated 11<sup>th</sup> April 2016, the Committee found that "there was irregular initiation authored by a non- authorized officer, who masqueraded as authorizing officer by signing the LG PP Form 1 and lowered the annual reserve price to UGX 180,060, 000/- that translated to Ugx 15,005,000 monthly reserve price in contradiction to the submitted reserve price indicated in 2.1 above as contravening section 62, subsection 1 and 2 of the Local Government (Public Procurement and Disposal of Public Assets) Regulations ,2006.(emphasis ours) The administrative review

committee made recommendations as follows;- 1. The Eastern Division staff(user department) continues collecting the Taxi park fees till a successful bidder is sought. 2. That management service of the Taxi Park be re-advertised since the selection process had glitches indicated in 1-4.

- 1.3 The Accounting Officer did not take any action upon receiving the report of the Administrative Review Committee.
- 1.4 On 20<sup>th</sup> April 2016, the BEB filed an application for Administrative Review to the Public Procurement and Disposal of Public Assets Authority hereinafter “the Authority”. In dismissing the application for administrative review, the Authority noted that the BEB had not applied for administrative review at the Entity level, that they had not paid administrative review fees and finally that the Authority only handled appeals against the Administrative Officers’ decision and therefore since the BEB had not made such an application to the Accounting officer at entity level their appeal “could not be handled”.
- 1.5 By letter dated 27<sup>th</sup> May 2016 the Authority informed the BEB of its decision and also revealed that it had undertaken investigations into the tender in accordance with Section 8 (c) of the Act and found as follows;- 1/ Post Bank as a credit institution listed by Bank of Uganda is not authorized to carry out services like issuing bank drafts or cheques in its individual capacity under the Financial Institutions Act 2004. 2/ The Cheque submitted by the aggrieved bidder did not meet the Entity’s requirements in the bidding document to submit a bank draft. The Authority advised that administrative review decision at the entity

level be set aside and that the entity should proceed with the procurement if the bids were still valid.

- 1.6 Upon receiving the Authority decision the entity resumed display of the best evaluated bidder and requested the BEB to extend their bid validity period for 30 days, which was accepted by the BEB.

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

- 2.1 By letter dated 30th May 2016 the applicant applied to the Tribunal for a review of the decision of the Authority.

- 2.2 The grounds for the Application to the Tribunal were as follows:

- (a) The Authority misdirected itself when it applied a narrow and restrictive interpretation and found that a bank cheque submitted by the applicant did not meet the entity's requirement of a bid security in form of a bank draft.

## 3.0 **DISPOSAL OF APPLICATION**

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

- (1) The Applicant's Application to the Tribunal dated 30<sup>th</sup> March 2016, Annexes to the Application, the written and oral submissions.
  - (2) The Entity's response to the Application, Annexes to the response, the written and oral submissions.
- 3.1 The Tribunal conducted a hearing for the Parties on 14<sup>th</sup> June 2016. The Applicant was represented by Mr. Arthur Mpeirwe who attended the hearing with the applicant's representatives, Mr Francis Agaba and Mr. Abyega. Mr. John Kalemera appeared for the Authority. The entity was represented by the Town Clerk Mr Ambrose Ochen and Mr. Sunday Hamdan.
  - 3.2 The Tribunal issued its decision on 15<sup>th</sup> June 2016 in summary form in accordance with Section 91 I (7) of the Act. The detailed decision appears below.

#### 4.0 **ISSUES**

- 4.1 Four (4) issues were formulated by the Parties for resolution by the Tribunal as follows;-
  - (a) ***Whether the current application is tenable after the Applicant's bid validity period expired.***
  - (b) ***Whether the Authority was justified in finding that a bank cheque submitted in the bid of the applicant for the Tender for the management and collection of user fees for Ntungamo Taxi***

***Park did not meet the Entity's requirement of a bid security in the form of a bank draft.***

***(c) Whether the Authority was justified to advise the Entity to set aside the administrative review decision made at Entity level and to proceed with the impugned procurement.***

***(d) Remedies.***

4.2 During of the course of the proceedings, it became apparent to the Tribunal that an additional issue as to the exhaustiveness of the PPDA investigation had arisen which the Tribunal couched as follows:

**“ Whether the Authority's investigation into the impugned procurement was exhaustive”**

#### **5.0 Submissions by Counsel**

5.1 In his arguments in support of the current application before the Tribunal, Counsel for the Applicant argued that the instant application was filed on 30th May 2016 before the expiry of their bid on 6<sup>th</sup> June 2016, therefore the application before the Tribunal should not be dismissed on this ground because their application had been filed before expiry of the bid validity period.

5.2 In support of the second issue Counsel for the Applicant argued that the Applicant submitted a bid for the tender to manage and collect user fees in Ntungamo Taxi Park. That the applicant was the highest bidder and should therefore have been declared the Best Evaluated Bidder That they applied for administrative review by the accounting officer

and that the Committee appointed to conduct the review had found that the “Cheque issued by Post Bank on behalf of the applicant as bid security was as good as a bank draft” (emphasis ours) That because the Committee had established other “glitches” in the bid process it had recommended cancellation of the procurement(BEB). Counsel submitted that the Committee appointed by the Accounting Officer had rightly found that the applicant’s cheque was a draft therefore the Authority had misdirected itself in arriving at a converse decision.

5.3 In support of the third issue Counsel relied on his submissions above that the Authority ought not to have found that the applicant had not complied with the bidding instructions because the applicant’s cheque drawn on the account held by Post Bank at Centenary Bank dated 22<sup>nd</sup> January 2016 for Ugx 3,612,000 was a bank draft tendered to the entity in compliance with the bidding document. Counsel argued that submission of the applicant’s cheque satisfied all the requirements of the bid because the Authority would have obtained cash in the event it banked the cheque in event of the applicant’s default under the terms of the bid.

5.4 In conclusion Counsel for the Applicant made the following prayers;-

(a) That the Tribunal reviews and sets aside the decision of the Authority dated 27<sup>th</sup> May 2016.

(b) That the Tribunal directs the Entity to retender the Procurement.

(c) That the Tribunal awards costs to the Applicant.

- 5.5 In response to the submissions of the Applicant on the first issue Counsel for the Respondent argued that the bidding document provided a deadline for bid submission which was stated to be on 18<sup>th</sup> January 2015 and the bid validity period required was 90 working days from the bid submission deadline.
- 5.6 Counsel submitted that the Applicant had acknowledged that the bid validity period for the impugned procurement expired on 31<sup>st</sup> May 2016. He argued that this period had not been extended.
- 5.7 Citing Regulation 49 (5) of the Local Governments (PPDA) Regulations, 2006 which 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, Counsel submitted that this was the only way the bid validity period could be extended. In further support of this proposition Counsel also cited Kazini Fredrick v. PPDA Application No. 16 of 2015 in which the Tribunal recalling its decision in Hoima Taxi Bus Owners and Drivers Savings and Credit Cooperative Society v. PPDA Application No. 5 of 2014, held that “once the bid validity expires, the procurement process comes to an end”. Counsel stressed that the Tribunal in the decisions cited above had decided that the Applicant in the instant circumstances could not fall within the category of a person intending to participate or a person participating in public procurement or disposal proceedings as defined in section 3 of the Act since their bid was no longer valid.
- 5.8 Responding to the second issue Counsel for the Authority argued that The Authority carried out an investigation into the impugned tender in



accordance with its mandate under Section 8 (c) of the PPDA Act, 2003 and found that:-

- (a) The bidding document issued by the Entity for the management and collection of user fees from Ntungamo Taxi park required bidders to submit the bid security in the form of a bank draft.
- (b) The Applicant submitted a Centenary Bank cheque issued by Post Bank Limited together with its bid to the Entity for the management and collection of user fees from Ntungamo Taxi park.
- (c) Post Bank Limited is a credit institution which is not authorized by the Bank of Uganda to carry out services such as issuing bank drafts or cheques in its individual capacity.
- (d) The cheque submitted by the Applicant did not meet the Entity's requirement in the bidding document to submit a bank draft

In conclusion Counsel prayed that the application should be dismissed since the Applicant's bid was non-compliant.

5.9 Turning to the third issue Counsel for the Authority argued that their decision advising the entity to set aside the decision of the administrative review instituted by the Accounting officer and proceed with the Procurement after ascertaining the validity of the bid security was based on the outcome of their investigation, and in the circumstances was justified.

In conclusion Counsel prayed for dismissal of the application with costs.

5.10 The Tribunal asked the representative from the Entity to address it on the issue of whether the Applicant's Bid had been compliant in as far as tendering of a bid security in conformity with the bid; in response The Town Clerk informed the Tribunal that he had been away at the time the Applicant requested for an administrative review. The Town Clerk said he had not agreed with the findings and recommendations of the committee appointed to investigate the complaint and disassociated himself from its recommendations. He also made reference to a letter dated 10<sup>th</sup> February 2016 from Centenary Bank in which the bank responded to an enquiry about the bid securities held by the entity. In that response Centenary Bank stated as follows;-

*" In reference to your request for confirmation of our bank drafts in your possession we confirm that drafts 760433 and 760434 with amounts 3,612,000/= and 1,080,000/= respectively are Centenary Bank Drafts and were issued by Ntungamo Branch and the other Cheque No 394 of amount 3,612,000/= is Centenary Bank Cheque issued to Post Bank as one of our clients, for further clarification in regard to the cheque refer to PostBank Ntungamo Branch." Signed etc....(emphasis ours)*

## 6.0 Resolution by the Tribunal

6.1 The Tribunal studied the Application, the responses to the Application and the written Submissions. It also carefully listened to the oral arguments made by the parties at the hearing.

- 6.2 In resolving this application the Tribunal will deal with the issues in the same order as presented by the parties.
- 6.3 With respect to the first issue the facts are settled, the bidding procedures were clearly stated in the bidding document. Under the rubric Validity of Bids It was provided that “**The bid validity required is 90 working days from closing date of bid submission**”. The deadline for submission of bids was at 11 am on 25<sup>th</sup> January 2016 in effect the bid validity period expired on 2<sup>nd</sup> June 2016. The applicant’s bid was still valid at the time they filed an appeal with the Tribunal against the Authority’s decision on 30<sup>th</sup> May 2016. In their intervention before the Tribunal the entity admitted that by letter dated 27<sup>th</sup> May 2016, they requested the BEB to extend their bid validity for a further 30 days, but did not similarly ask the Applicant to do so because the Authority had found that “they (the applicant) had presented a cheque dated 22<sup>nd</sup> January 2016 issued by Centenary Bank to Post Bank as their client instead of a bank draft as required under the solicitation documents.
- 6.4 **Regulation 49 of The Local Governments (Public Procurement and Diposal of Public Assets) Regulations 2006 deals with bid validity periods and provides as follows;-**
- 49(1) Bid documents shall state the period within which a bid is to remain valid.
- (2) The Bid Validity period shall be calculated from the closing date of the bid submission and shall remain in force until the close of business on the last day of the validity period.

- (3) When determining the duration of a bid validity period, sufficient time shall be allowed to enable:
- (a) the procuring and disposing entity to undertake an evaluation, post qualification and negotiations as appropriate;
  - (b) the contracts committee to adjudicate the award of the contract recommendations;
  - (c) a bidder to challenge the award decision before a contract is formed; and
  - (d) the procurement and disposal unit to prepare a letter of bid acceptance or contract document and obtain all necessary approvals prior to issue of the letter or document, within the validity period of the bid.
- (4) An extension to the initial period of bid validity shall not normally be requested from a bidder.
- (5) 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 minimum period to complete the process outlined in sub regulation (3).
- (6) In extending the validity of a bid, the bidder shall not be permitted to change the price or any other details of the bid except those conditions relating to the validity of the bid.

(7) A bidder is free to refuse to extend the validity of the bid, without forfeiting his or her bid security.

6.5 Applying the law to the facts it is clear that the applicant's bid was still valid at the time they filed this appeal and only expired during its pendency before the Tribunal. In this regard the Tribunal recalls the decision of the Court of Appeal in Semwo Construction Company Ltd – vs- Rukungiri District Local Government Court of Appeal Civil Appeal No68 of 2010, in which the Court of Appeal faulted the procuring and disposing entity for failing to request the bidders to extend their bid validity when it became necessary to do so.

6.6 In the present case before us it is clear that the entity in exercising its obligation under regulation 49 of the above cited Regulations requesting the BEB to extend its bid validity without also asking the applicant to do so was biased and unfair. The action of the entity in effect sought to defeat the applicant's right of appeal to this Tribunal. Further and more significantly this action was a direct contravention of regulation 49(3)(c) which requires the Entity to allow sufficient time to a bidder to challenge an award decision before contract formation. The upshot of the entity's action was to ensure that the BEB by default remained the only bidder in position to conclude the contract.

6.7 Therefore whilst we agree with the Authority that the applicant's bid expired we find that this was so owing to the inability or unwillingness of the entity to request the applicant to extend the bid validity for the duration of the period it exercised its statutory right to appeal, contrary to regulation 49(3) (c) of the Local Government (Procurement and Disposal of Public Assets) Regulations 2006.

7.0 Turning to the second issue,- to determine whether applicant complied with the bidding instruction which required a security in the form of a bank draft, the Tribunal closely examined a copy of an instrument number 06573844 dated 22/1/2014 , in the sum of Ugx 3,612,000 issued by Centenary Bank in favor of Ntungamo Municipal Council drawn on the account of Post Bank Ltd , annexed to the entity's letter to the Tribunal dated 1<sup>st</sup> June 2016 as annexure "D" as well as the letter dated 10<sup>th</sup> February 2016 which has been referred to earlier in this ruling, which was annexed to the same communication as annexure "E".

**Section 72 (1) of the Bills of Exchange Act Cap 68** defines a cheque as follows

**(1) *A cheque is a bill of exchange drawn on a banker payable on demand.***

***Paget's Law of Banking 9<sup>th</sup> Edition (Edited by Megrah & Ryder) Butterworths 1982, at Ppg 216 defines a Bankers draft as follows;- "Drafts drawn by one branch on another branch or on the head office of the same bank or vice versa are not cheques"***

7.1 Having examined a copy of the instrument tendered in by the applicant as bid security (annexture "D") and relying on the above cited authorities definition of what amounts to a bank draft in contradistinction to a cheque it is clear that the instrument tendered in as a bid security by the applicant was a cheque in as far as it was an unconditional order in writing addressed by Post Bank, signed by two of its authorized signatories requiring Centenary Bank to pay on demand UGX 3,612,000.to the entity. In contrast the instrument tendered in by the BEB dated 22<sup>nd</sup> January 2016 for Ugx 3,612,000 (annexture"E 3") payable to the entity was a draft in that it was an instrument drawn on Centenary Bank and payable to the entity.

- 7.2 We therefore agree with the Authority that the Applicant submitted a bank cheque instead of a bank draft contrary to the bidding document which required all bidders to submit a bid security in the form of a bank draft.
- 8.0 Turning to the third issue, to recap the facts before us, the Authority declined to hear the appeal against the decision of the administrative review committee at the entity level filed by the BEB for reasons recited above, however in exercise of its mandate under the Act, the Authority instituted an investigation into the Procurement process. The outcome of the investigation was contained in its findings which were communicated to the entity, stating that the Applicant's bid was non-compliant because it had submitted a cheque as bid security instead of a bank draft as required under the solicitation document.
- 8.1 The Authority advised the entity to put aside its administrative review decision and proceed with the procurement if the bids were still valid.
- 8.2 At the hearing the Accounting Officer of the entity expressed dissatisfaction with the decision of the Administrative Review Committee at entity level and disassociated himself from the findings and decision of the Committee. The Accounting officer however did not take steps under the Act particularly under Section 90 (2) (b) to formally disagree with the findings of the Committee and petition the Authority to conduct a fresh review of the complaint, in default of such action we find that the Accounting Officer was bound by the recommendations made by the Administrative Review Committee.

- 8.3 The Tribunal perused the record of the Administrative Review Committee and observed that the Committee recommended cancellation of the tender process because there was ***“irregular initiation authored by non-authorized officer, who masqueraded as authorizing officer by signing the LG PP form I and lowered the annual reserve price to UGx 180,060,000 that translated to UGX 15,005,000 monthly reserve price (attached annexure 2) in contradiction of the submitted reserve price indicated in 2.1 above as contravening section 62, subsection 1 and 2 of The Local Government (Public Procurement and Disposal of Public Assets) Regulations 2006”***
- 8.4 The Tribunal noted based on the documentation adduced before it during the hearing, the Investigation conducted by the Authority did not include in its terms of reference an investigation into the veracity of the main findings of the Administrative Review Committee at entity level which resulted in its recommendation calling for cancellation of the procurement.
- 8.5 We find that the investigation conducted by the Authority into the procurement was not exhaustive because it overlooked the findings of the Administrative Review Committee of the entity with respect to the irregular initiation of the procurement process by a non-authorized officer, lowering of the reserve price as in paragraph 8.3 above which were the main causes for cancellation of the procurement by the entity.
- 8.6 In the circumstances the Tribunal is not satisfied that the tendering process for management of Ntungamo Taxi Park was conducted in accordance with the spirit and letter of the Act.



9.0 The Application is upheld in part in as far as the Authority conducted an inexhaustive investigation and therefore arrived at an erroneous conclusion to advise the entity to continue with the procurement.

10.0 **DECISION OF THE TRIBUNAL**

1. The Tribunal sets aside the Authority's advice to the entity to continue with the procurement and upholds the **Recommendations** of the administrative review committee at the entity level.
2. Parties shall bear their own costs.

Dated this 15<sup>th</sup> day of June 2016

SIGNED by  
OLIVE ZAALE OTETE

SIGNED by  
MOSES JURUA ADRIKO

SIGNED by  
JOEL KATEREGGA