

THE REPUBLIC OF UGANDA

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

APPLICATION NO. 6 OF 2015

APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY IN RESPECT OF THE TENDER (PROCUREMENT) FOR MERWA MARKET FOR F/Y 2015/2016.

APPLICANT: BAZAAR ARUA BUS OPERATORS COOPERATIVE SOCIETY LIMITED

AUTHORITY: PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY

(Before: OLIVE ZAALE OTETE- CHAIRPERSON, MOSES JURUA ADRIKO- MEMBER AND DAVID KABATERAINE-MEMBER)

DECISION OF THE PPDA APPEALS TRIBUNAL

1.0 BACKGROUND/FACTS

- 1.1 On 4th April 2015, Yumbe District Local Government (the entity) initiated the procurement for management services of Merwa Market for the financial year 2015/2016.
- 1.2 Bazaar Arua Bus Operators Cooperative Society Ltd (the Applicant) was one of the bidders in this procurement.
- 1.3 The report of the evaluation committee dated 21st May 2015 indicated that the Applicant was eliminated at preliminary evaluation stage due to failure to submit a commitment letter for advance payment for three months. On 22nd May 2015, the contracts Committee awarded the contract for management of revenue collection for Merwa Market to Orio and Sons. The Applicant applied to the Accounting Officer for administrative review contesting the award of the contract to Orio and Sons.
- 1.4 On 22nd June 2015, the Accounting Officer submitted his administrative review decision where he rescinded the decision of the contracts committee awarding the contract for management of revenue collection for Merwa Market to Orio and Sons.
- 1.5 Dissatisfied with the decision of the Accounting Officer, the Applicant applied to the Public Procurement and Disposal of Public Assets Authority (the Authority) for administrative review of the Accounting Officer's decision.
- 1.6 The Authority did not find merit in the grounds raised by the Applicant and rejected the application.
- 1.7 The Applicant is aggrieved by the decision of the Authority and has lodged this Application to the Tribunal for review of the Authority's decision.

2.0 APPLICATION FOR REVIEW OF THE AUTHORITY'S DECISION.

- 2.1 By letter dated 10th August 2015, the Applicant lodged an Application with the Tribunal for review of the Authority's decision on the following grounds:

- (i) *Whether the Authority erred by finding that the bid of the Applicant was non responsive;*
- (ii) *Whether the Authority erred in finding that the evaluation committee did not need to seek clarification under regulation 74(2) of the Local Government (Public Procurement and Disposal of Public Assets) Regulations, 2006.*

2.2 **DISPOSAL OF APPLICATION**

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

- (1) Application for review of the Authority's decision dated 10th August 2015;
- (2) Authority's response to the Application, Annexes to the Response and submissions;
- (3) Applicant's submissions.

3.1 The Tribunal conducted a hearing for the Parties on 16th September 2015. The Applicant was represented by Mr. Nelson Cemari while the Authority was represented by Mr. John Kallemera.

3.2 At the beginning of the hearing, Counsel for the Authority raised a preliminary objection, which had not however been expounded on in their written submissions. Counsel submitted that the Application before the Tribunal is incompetent because the bid in respect of which the Appeal is premised is expired.

3.3 Counsel submitted that the bid document under 'Bidding Procedures' indicated bid validity to be 30 days from the closing date of bid submission, which was 8th May 2015. That 30 days bid validity therefore ended on 7th June 2015.

3.4 Counsel quoted regulation 49(5) of the Local Government PPDA Regulations which provides that where an extension to the bid validity becomes necessary, a bidder shall be requested in writing, before the expiry period to

extend the validity of their bid. In support of his submission, Counsel cited the Tribunal decision on bid validity in **Application 5 of 2014 Hoima versus PPDA and Application 1 of 2015 James Wendi versus PPDA**. Counsel contended that there is no evidence to prove that Yumbe District Local Government asked the Applicant to extend their bid. In the circumstances, the Applicant's bid expired and therefore the Tribunal should not consider the merits of the Application before it as doing so would be nugatory.

3.5 The Tribunal pointed out to Counsel for the Authority that the decision of the Authority which was being appealed against in the instant Application was made on the **4th August 2015, several weeks after the expiry of the bids**. The Tribunal further pointed out to Counsel that the decision of the Authority was that *'the Entity is advised to proceed with the procurement process and not to refund the administrative review fees paid by the complainant'*. The Tribunal asked Counsel to comment on the correctness of the decision to continue with the procurement in light of the fact that the bids had expired.

3.6 Counsel for the Authority conceded that the decision of the Authority advising the entity to continue with the procurement process was incorrect because at the time of the Authority's decision on 4th August 2015, the bids had expired.

3.7 In his response to the preliminary objection, Counsel for the Applicant submitted that since the Authority had conceded that their decision advising the entity to continue with the procurement was incorrect; and since the bids had indeed expired, he had no further submissions to make.

4.0 Resolution of preliminary objection by the Tribunal

The Tribunal found that the bids in the impugned procurement expired 30 days from closing date of bid submission (8th May 2015). On 4th August 2015 when the Authority made a decision advising the Entity to continue with the procurement, the bids had long expired and therefore there was no procurement that could be continued. The decision of the Authority to that extent was therefore incorrect.

4.1 The Tribunal treated this issue, not as a preliminary objection but as a concession by the Authority that its decision was incorrect. The Tribunal does

not find it useful to handle the grounds of this Application as raised by the Applicant since the concession by the Respondent effectively disposes of this Application.

- 4.2 The concession by the Respondent therefore means that the Decision of the Entity still stands and the status quo automatically reverts to that position.
- 4.3 In the circumstances, the Tribunal upholds the Application and makes the following Orders;

5.0 DECISION OF THE TRIBUNAL

1. The Application is upheld.
2. The Decision of the Authority is hereby vacated.
3. The decision of the Accounting Officer that the procurement process be rescinded still stands.
4. The Tribunal orders the Accounting Officer Yumbe District to refund the Applicant's administrative review fees.
5. The Applicant is awarded seven hundred and fifty thousand shillings to cover its out of pocket expenses and legal costs.

Dated at Kampala this 16th Day

SIGNED by the said
OLIVE ZAALE OTETE

SIGNED by the said
MOSES JURUA ADRIKO

SIGNED by the said
DAVID KABATERAINE