

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

**APPLICATION NO. 9 OF 2014**

**APPLICATION FOR REVIEW OF THE DECISION OF THE PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY DECLINING JURISDICTION TO HEAR THE APPEAL FOR ADMINISTRATIVE REVIEW.**

**APPLICANT: M/S ETC AGRO TRACTORS AND IMPLEMENTS LIMITED**

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

**(BEFORE: OLIVE ZAALE OTETE (CHAIRPERSON) MOSES JURUA ADRIKO- MEMBER,  
DAVID KABATERAINE-MEMBER AND ARCHT. JOEL KATEREGGA - MEMBER)**

## DECISION OF THE PPDA APPEALS TRIBUNAL

### 1.0 BACKGROUND/FACTS

1.1 On 31<sup>st</sup> October, 2013 the Office of the Prime Minister (OPM) through the Department of Pacification and Development initiated the procurement of 21 tractors under various programmes namely; Karamoja Affairs, Northern Uganda Rehabilitation, Rwenzori, Teso and Bunyoro.

1.2 On 4<sup>th</sup> February, 2014 the contracts committee approved the Restricted Domestic Bidding method of procurement and the Bidding Document and shortlisted 11 providers as follows:-

- a) M/s Tata (U) Ltd;
- b) M/s Akamba (U) Ltd;
- c) The Cooper Motor Cooperation (U) Ltd;
- d) M/s Foton (Uganda) Ltd;
- e) ETC Agro Tractors and Implements Ltd (the "Applicant");
- f) M/s Farm Engineering;
- g) M/s Engineering Solutions;
- h) M/s Car & General (U) Ltd;
- i) M/s National Enterprises Co-operation Co. Ltd;
- j) M/s China North Machine (U) Co. Ltd; and
- k) M/s Mantrac Uganda.

1.3 On 25<sup>th</sup> February, 2014, the quantity of tractors to be supplied was increased to 26 tractors.

- 1.4 Of the 11 providers invited to bid only 3 Providers submitted bids. The bids were opened and M/s Akamba (U) Ltd had the lowest bid at USD 1,136,018. However, OPM re-tendered the process allegedly because only three providers had responded to the invitation to bid. Fresh Bids were received on 26<sup>th</sup> March 2014.
- 1.5 On 22<sup>nd</sup> April, 2014 the Public Procurement and Disposal of Public Assets Authority (the "Authority") requested OPM to investigate a complaint from M/s Cooper Motors Corporation (U) Ltd, as to why the re-tendering was done. Subsequently the Accounting Officer investigated the allegations and issued a report on 3<sup>rd</sup> June 2014 dismissing the complaint.
- 1.6 The Entity proceeded with the procurement process and on 25<sup>th</sup> June, 2014 the Contracts Committee approved the evaluation report and recommended award of contract for the supply of twenty six (26) tractors to M/s Akamba Uganda Limited at a contract price of USD 913,000. Subsequently the Notice of Best Evaluated Bidder (NOBEB) was displayed on 26<sup>th</sup> June 2014.
- 1.7 Upon display of the NOBEB complaints were received from bidders including M/s Engineering Solutions, the Applicant and M/s Cooper Motors Corporation (U) Ltd. By letter dated 3<sup>rd</sup> July 2014 OPM advised the complainants to pay the Administrative Review fees in accordance with the law. Based on the advice given, M/s Cooper Motors Corporation and M/s Engineering Solutions Ltd complied and paid for Administrative Review.
- However, the Applicant did not pay the administrative review fees. The Administrative Review was entertained on the strength of the payment by the other two complainants.
- 1.8 On completion of the administrative review process the Accounting Officer issued a report recommending re-evaluation of bids.

- 1.9 Upon receipt of the Administrative Review report, Cooper Motors Corporation Ltd was not satisfied and appealed to the Authority for an Administrative Review and this resulted into the Authority suspending the process and instituting an investigation.
- 1.10 On 3<sup>rd</sup> September, 2014 the Authority issued its report recommending the re-evaluation of the bids.
- 1.11 Based on the report of the Authority, bids were re-evaluated and on 24<sup>th</sup> October 2014 the Contracts Committee approved the evaluation report and awarded the contract to M/s Engineering Solution Uganda Limited at a contract price of USD 1,112,852. A copy of the NOBEB was displayed and communicated to all the bidders.
- 1.12 On 30<sup>th</sup> October, 2014 OPM received an inquiry from the Applicant into reasons why they were disqualified from the procurement process.
- 1.13 By letter dated 5<sup>th</sup> November 2014, OPM informed the Applicant that their bid document did not conform to Part 1 Section 1.12.1 (f), Instructions to Bidders and Part 3 Section 8 GCC 19.1, which required the amount of the Performance Security to be 10% of the total Contract amount quoted in Uganda Shillings.
- 1.14 On 26<sup>th</sup> November, 2014 OPM forwarded the draft Contract to the Solicitor General for approval.
- 1.15 On 28<sup>th</sup> November, 2014 OPM received a letter from the Authority dated 25<sup>th</sup> November 2014 informing the Accounting Officer that the Authority had instituted an Administrative Review on the procurement of twenty six (26) tractors and suspended the process.
- 1.16 On 5<sup>th</sup> December, 2014 the Authority conducted a hearing of the appeal in the presence of OPM, the Applicant and M/s Engineering Solutions.

- 1.17 On the 9<sup>th</sup> December, 2014 the Solicitor General cleared the Contract.
- 1.18 On 15<sup>th</sup> December, 2014 the Authority issued the Administrative Review Report which established that the Applicant never paid the administrative review fees and advised the Entity to proceed with the procurement process to its logical conclusion.
- 1.19 On 19<sup>th</sup> December, 2014 the Contract for the supply of twenty six (26) tractors was signed between Government of Uganda represented by OPM and M/s Engineering Solutions Ltd.
- 1.20 In a letter dated 19<sup>th</sup> December 2014, the Applicant appealed to the Tribunal against the decision of the Authority. This letter was copied to the Executive Director of the Authority and the Permanent Secretary OPM. The Tribunal received the Application on 22<sup>nd</sup> December 2014.
- 1.21 On 9<sup>th</sup> January, 2015 M/s Engineering Solutions Ltd submitted a Performance Guarantee (PG) of USD 111,285.20 in accordance with the provisions of the bidding document for this procurement.
- 1.22 On 12<sup>th</sup> January, 2015 OPM received a letter from M/s Engineering Solutions Ltd dated 9<sup>th</sup> January, 2015 requesting for guidance on inspection and the delivery point for tractors and implements.
- 1.23 On 15<sup>th</sup> January, 2015 OPM wrote to Orient Bank Limited to verify the authenticity of the Performance Security.
- 1.24 On 15<sup>th</sup> January 2015, the PPDA Appeals Tribunal (Tribunal) wrote to the OPM, asking the OPM, among other things, to suspend action in the procurement until the Application before the Tribunal was disposed of.
- 1.25 Based on the order issued by the Tribunal which was received by the OPM on 16<sup>th</sup> January 2015, OPM wrote to M/s Engineering Solutions Ltd on 19<sup>th</sup>

January, 2015 halting any further action until hearing and determination of the appeal by the Tribunal.

1.26 The Applicant is not satisfied with the decision of the Authority, hence this Application for a review of the decision of the Authority.

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

2.1 On 22<sup>nd</sup> December 2014, the Applicant lodged an application with the Tribunal seeking to have the decision of the Authority reviewed on the following grounds:

1. *The Authority erred in reaching a finding that it had no jurisdiction to handle the appeal for administrative review where the Applicant has not paid the requisite administrative review fees.*
2. *The Authority erred in its finding that the Accounting Officer of the OPM treated the Application as a request for the clarification to the reasons for failure indicated in the notice of the best evaluated bidder that was displayed and issued to bidders;*
3. *The Evaluation Committee erred in reaching a conclusion that the complainant did not comply with the requirement of providing performance security of 10% of the total contract price as they stated in their Bid Submission Sheet.*
4. *The Entity erred in changing the evaluation criteria with regard to the applicant in circumstances where there was no re-submission of bids.*

2.2 On 22<sup>nd</sup> January, 2015 the Tribunal asked OPM to provide it with copies of minutes of the Contracts Committee and Evaluation Committee in respect of the procurement reference OPM/SPLS/13-14/00156.

## 3.0 **DISPOSAL OF APPLICATION**

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

- (1) The Appeal by the Applicant against the decision of the Authority dated 15<sup>th</sup> December 2014 and the documents the Applicant was to rely on;
- (2) The Respondent's response, Annexes to the response and written submissions;
- (3) The Bid document for the procurement of twenty six (26) tractors dated April 2014;
- (4) Minutes of the meeting of the Contracts Committee of the OPM dated 25<sup>th</sup> March 2014;
- (5) A letter from the OPM dated 20<sup>th</sup> January 2014 responding to the Tribunal by giving further information on the grounds of appeal.

3.2 The Tribunal summoned both parties for a hearing on 22<sup>nd</sup> January 2015. The Applicant was represented by Mr. Wegulo Dan of M/s Wegulo and Wandera Advocates. The Authority was represented by Ms. Esther Kusiima and Mr. John Kallemera. Mr. A.D Kibenge, Mr. Wanjala Joel, Mr. Stanley Ahabwe and Ms Nantamu Oliver from the OPM attended. In attendance from the Applicant were Mr Krishna R., Mr Ramakrishna Y. and Mr Okungu Moses.

3.3 The issues for resolution by the Tribunal were the following:-

1. *Whether the Authority erred in declining to consider the Application for administrative review on account of non-payment of administrative review fees.*
2. *Whether the procurement process was properly handled by the OPM.*
3. *Whether the contract for the supply of the tractors was signed during the administrative review period.*
4. *Remedies*

#### 4.0 RESOLUTION OF ISSUES

*Issue one (1): Whether the Authority erred in declining to consider the Application for review on account of non-payment of administrative review fees.*

- 4.1 The Applicant contended in its Application that section 90 (1a) (a) of the Public Procurement and Disposal of Public Assets Act, 2003 (the Act) does not in any way render any complaint to the Accounting Officer that is not accompanied with the prescribed fee incompetent, null and void.
- 4.2 The Applicant contended that the OPM had earlier entertained complaints by M/S Engineering Solutions (U) Ltd, M/S Cooper Motors Cooperation (U) Ltd (CMC) including the Applicant and yet not all of the complainants in the said process had paid the requisite administrative review fees. The fact that their complaint was adjudicated upon without payment of the requisite fees was proof that the entity had waived the requirement.
- 4.3 The Applicant opined that the Authority ought to have found that the entity waived the requirement for payment of fees, entertained the complaint and gave its decision; that the entity and the Authority were stopped from relying on non-payment of the fees to find that the complaint and application for Administrative Review were incompetent.
- 4.4 The Applicant further submitted that the Authority by letter dated 3rd November 2014 directed the Accounting Officer of the entity to advise the Applicant on the necessary administrative review fees to be paid and the Entity's bank details for payment of the same. The Applicant contends that the Accounting Officer did not effect the Authority's directive because the Applicant was not advised on the fees to be paid nor the bank details. The

Applicant submitted that the failure to pay the requisite fee is attributable to the entity's intentional refusal and neglect to advise the Applicant on the procedure of payment of the Administrative Review fees and that this oversight or omission has occasioned the Applicant an injustice.

- 4.5 In its response, the Authority submitted that at the hearing of the Applicant's application before the Authority, the officials/representatives of the Applicant confirmed that they had not paid the requisite administrative review fees. The Authority further stated that during the hearing, the officers of the entity (OPM) stated that the Applicant's complaint contained in a letter dated 29<sup>th</sup> October 2014 was treated as a request for clarification on the reasons for disqualification and not an administrative review application since the Applicant had not paid administrative review fees.
- 4.6 The Authority submitted that section 90(1a) (a) of the Act provides that a complaint by a bidder against an entity shall be in writing and shall be submitted to the Accounting Officer of the entity with the prescribed fee; that payment of administrative review fees is further emphasized in regulation 11 of the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations 2014.
- 4.7 The Authority further submitted that under regulation 9 of the Administrative Review Regulations, the Authority shall dismiss without investigation a complaint which does not comply with section 90 of the Act. The Authority contended that the Applicant was not properly before the Authority because the administrative review fees were not duly paid by the Applicant to the procuring and disposing entity; that non-payment of fees rendered the complaint incompetent and warranted the dismissal of such a complaint by the Authority. The Authority quoted the case of **Uganda Railways Corporation**

**v. Ekwaru & Others Civil Application No. 185 of 2007** where the Court of Appeal held that a court of law cannot sanction what is illegal, an illegality once brought to the attention of the court overrides all questions of pleadings including any admissions made. The Authority in conclusion on this issue submitted that the application before the Accounting officer was untenable and in contravention of the law therefore no application for administrative review could lie from it to the Authority; that the Authority acted in accordance with the law when it decided that it had no jurisdiction to handle the appeal for administrative review where the applicant had not paid the requisite administrative review fees.

- 4.8 The Tribunal carefully considered the submissions of both Counsel and the relevant provisions of the law and the authority cited.
- 4.9 The Tribunal noted that in the instant procurement, the Applicant made complaints to the Accounting Officer twice. In the first complaint dated 30<sup>th</sup> June 2014, the Applicant objected to the recommendation for award of the contract to one of the bidders i.e. M/S Akamba Uganda Ltd. Two other bidders i.e. Engineering Solutions (U) Ltd and Cooper Motors Corporation (U) Ltd also filed complaints with the Accounting Officer OPM. The Administrative review committee found it prudent to consolidate all the complaints and handle them at once. The committee produced a report dated 25<sup>th</sup> July 2014.
- 4.10 During the hearing an officer from the OPM informed the Tribunal, which information was not disputed by the Applicant, that the Applicant did not pay administrative review fees to the Accounting Officer of OPM, inspite of the fact that the Accounting Officer by letter dated 3<sup>rd</sup> July 2014 advised the Applicant to pay the fees before their complaint could be entertained.
- 4.11 In their letter to the Tribunal dated 20<sup>th</sup> January 2015, the Accounting Officer informed the Tribunal that the other two bidders who had complained paid

the administrative review fees while the Applicant had not. That the administrative review was entertained on the strength of the payment of fees by the other two complainants.

- 4.12 The Applicant made a second complaint to the Accounting Officer OPM by letter dated 29<sup>th</sup> October 2014. By letter dated 3<sup>rd</sup> November 2014 which was copied to the Applicant, the Authority asked the Accounting Officer to advise the Applicant to pay the review fees. It is clear from the submissions of both parties that the Applicant did not pay administrative review fees in respect to the second complaint. The Applicant informed the Tribunal that the reason it did not pay fees is due to the fact that the OPM did not advise it of the amount of fees to be paid and the bank details.
- 4.13 In making a decision on this issue, the Tribunal mainly relied on section 90(1a) (a) of the Act and regulations 9 and 11 of the Administrative Review Regulations S.I 16 of 2014 and the Accounting Officer's letter to the Applicant dated 3<sup>rd</sup> July 2014 and the Authority's letter dated 3<sup>rd</sup> November 2014.
- 4.14 Section 90 (1a) (a) of the Act requires that an application for administrative review shall be accompanied by a prescribed fee. Regulation 11 and the Schedule to the Administrative Review Regulations have prescribed the fees to be paid. The Schedule stipulates the amount of fees to be paid and the fees are based on the value of the procurement.
- 4.15 The Tribunal finds that the Applicant should have known the provisions of the procurement law in relation to filing complaints. The Act is clear on the requirement to pay administrative review fees prior to filing a complaint. The Regulations in the Schedule clearly stipulate the amount of fees to be paid. The Tribunal finds that the Applicant deliberately refused to pay the review fees and by so doing flouted the provisions of the law. The Tribunal finds no merit in the Applicant's argument that their failure to pay fees was due to the

fact that the Accounting Officer intentionally refused to inform the Applicant of the amount of fees payable and method of payment. This is not tenable because the amount is clearly specified in the Schedule and the Applicant ought to have been aware of this information.

- 4.16 The Tribunal also noted the contents of the Accounting Officer's letter to the Applicant dated 3<sup>rd</sup> July 2014 in respect to the first complaint. The letter states in part as follows "*....a complaint with a request for administrative review of the procurement is supposed to be lodged to the Accounting officer having paid a prescribed fee ..... In view of the legal requirement, you are requested to attach evidence of payment to the Entity of Uganda Shillings five million. The money should be paid to Accounts Section (Cashiers' office) and then the official receipt should be issued to you*".
- 4.17 It is clear from this letter that the Applicant was informed of the amount and where the money was to be paid. The amount was Uganda Shillings five million to be paid to Accounts Section Cashier's office, OPM.
- 4.18 The Applicant blatantly failed to comply with the provisions of the law in relation to payment of administrative review fees and the advice on how much to pay and where to pay. The Tribunal agrees with the decision of the Authority to decline jurisdiction to hear the application for Administrative Review since the Applicant failed to pay the statutory prescribed review fees. The Tribunal is in agreement with the authority cited by the Authority (**Uganda Railways Corporation v. Ekwaru supra**) which is to the effect that courts should not sanction what is illegal.

Ground one of the Application fails.

- 4.19 2. Whether the procurement process was properly handled by the OPM.**

This issue was framed by the Tribunal at the hearing. The Tribunal deemed it important to address itself on the manner in which the instant procurement was handled by the OPM , notably the decision to retender the procurement on account that the response to the first invitation was poor.

- 4.20 From the chronology of events as laid down in the Administrative review report of 25<sup>th</sup> July 2014 and the letter of the entity to the Tribunal dated 20<sup>th</sup> January 2015, the entity initiated the procurement of 21 tractors (later increased to 26) in October 2013. The contracts committee of the entity approved the method of procurement to be restricted bidding. Eventually eleven (11) providers were invited to bid. Out of the 11, only three responded. The Head of the entity's procurement and disposal unit made a submission to the contracts committee for approval of retendering the procurement of 26 tractors sighting mainly poor response to the invitation. The retendering was approved by the contracts committee on 26<sup>th</sup> March 2014. Using the same list of 11 providers, four providers responded to the second invitation.
- 4.21 The Tribunal noted that when the entity received the three bids following the first invitation, the entity opened the bids and read out the bidder's respective prices during the bid opening exercise held on 20<sup>th</sup> March 2014 (Table 2 page 7 of Administrative Review Report). The Tribunal also noted that the bidders who responded to the second invitation i.e. Engineering Solutions (U) Ltd and Akamba Uganda Ltd significantly lowered their prices (page 15 of the Report).
- 4.22 The administrative review committee in their report found that there was no justifiable reason for the contracts committee to order a retender. According to the committee, the only 'justifiable reason for retendering could have been a result of a substantial amendment in the specifications which was not the case. The committee further found that if the retendering was due to poor

response, the bids should not have been opened in the first place. It is important to note that the response of the head of procurement unit of OPM was that opening of the tenders was an 'oversight'.

The Tribunal noted that while the committee found fault with the process of retendering, the Committee did not find that this was a substantial omission because the Committee seemed to have been convinced by the entity's head of procurement that this was an oversight.

4.23 The Tribunal on the contrary, finds that many of the problems and subsequent delays that affected this procurement were due to the entity's decision to retender, despite the fact that it had received three (3) bids and more so retendering the entire procurement after opening the bids of the three bidders who responded to the first invitation.

4.24 During the hearing, the Tribunal asked the officer from the OPM whether he was aware of the provisions of the law regarding the procedure to be adopted by an entity in case of receipt of few bids. The officer indicated to the Tribunal that he was not aware.

4.25 The Tribunal finds that the procedure for handling sole or limited bids is clearly laid down in regulation 8 of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations SI 16 of 2014. For ease of reference, the regulation is reproduced here below:

***"8. Receipt and evaluation of single bid or limited number of bids.***

*(1) Where a procuring and disposing entity receives one bid or a limited number of bids in response to a bid notice or in response to bidding documents sold to bidders, the procuring and disposing entity may accept the single bid or the limited number of bids.*

- (2) *For purposes of sub regulation(1), an evaluation committee shall evaluate the single bid or limited number of bids where the evaluation committee determines that -*
- (a) *the bidding period was sufficient for the procurement method and the requirement;*
  - (b) *the terms and conditions of the bidding documents were reasonable and not excessive to deter completion;*
  - (c) *the bid notice, if any was published in an appropriate publication and on the required date;*
  - (d) *the amendments to the bidding documents, if any, allowed sufficient time for the bidders to take the amendments into account in preparing the bids;*
  - (e) *there was no other extraneous events or circumstances that may have affected the ability of the bidders to respond to the bid notice of the bidding documents;*
  - (f) *there is no suspicion of collusion between the potential bidders; and*
  - (g) *the choice of procurement method was appropriate for the market and that there is an adequate number of potential bidders that make completion possible.*
- (3) *In this regulation "limited number of bids" means bids of small proportion of the bidders who bought or who were issued with bidding documents.*

4.26 A close reading of regulation 8 shows that an entity has power to evaluate limited bids as long as the entity is satisfied that the circumstances specified in regulation 8(2) are not applicable in the procurement under review.

4.27 It is evident that the OPM did not follow the procedure provided by regulation 8 (supra) relating to handling of limited bids. If the procedure laid down in regulation 8 had been complied with, the resultant delays that resulted from the decision to retender would have been avoided. The Tribunal observed that upon retender, only one bidder was added to the evaluation list. It was also observed that following retender, the bid prices were significantly lowered

which could have impacted on the bidders' performance. Furthermore, opening the bid prices of the first bidders and then subsequently retendering eroded the principles of confidentiality fairness economy and efficiency.

It is imperative that Procuring Entities in undertaking their statutory mandate comply with the relevant law and Regulations which mandate observance of the basic principles of public procurement as stipulated in Section 43 of the Act. The OPM should in liaison with the Authority take such steps to ensure that the officials involved in Procurement and Disposal at the Entity are sufficiently sensitized to ensure that similar process in the future are not botched as was apparent in the procurement process before us.

4.28 *3. Whether the contract for the supply of the tractors was signed during the administrative review period/should have been signed in the 10 days allowed to an aggrieved party to appeal to the Tribunal.*

4.29 The letter by the entity to the Tribunal dated 20<sup>th</sup> January 2014 revealed that the contract for the supply of the twenty six (26) tractors was signed between the Government of Uganda represented by OPM and M/S Engineering Solutions Ltd on 19<sup>th</sup> December 2014.

4.30 It should be noted that the Appeal by the Applicant against the decision of the Authority is dated 19<sup>th</sup> December 2014, the very day the contract was signed, although it was received by the Tribunal on 22<sup>nd</sup> December 2014. It should also be noted that the Authority and the Accounting Officer of OPM were subsequently served with copies of the Appeal to the Tribunal.

4.31 The Tribunal asked both Counsels for the Applicant and the respondent to address the Tribunal on this issue.

- 4.32 Counsel for the Applicant submitted that if the Tribunal finds that contract is illegal, it has power under section 91(6) of the Act to set aside the contract.
- 4.33 Counsel for the Authority submitted that there was no legal impediment to signing the contract. Counsel informed the Tribunal that by letter dated 15<sup>th</sup> December 2014, the Authority gave a go ahead to the Accounting Officer to proceed with the procurement process having found that the Applicant for administrative review had not paid the requisite fees. The Authority stated that the contract was signed on 19<sup>th</sup> December 2014, after the Authority had given the entity a go ahead. Counsel submitted that unlike the case of best evaluated bidder notice where the law specifically provides that a contract shall not be signed until the expiry of ten (10) days following the display of the notice of best evaluated bidder, the same was not true with award of contracts. That the Act does not specify a time within which contracts should be signed and that therefore, since the Authority had given a go ahead, there was no impediment to the entity signing the contract with the best evaluated bidder.
- 4.34 Asked by the Tribunal to comment on section 90(7) (a) of the Act which provides that subject to Part VIIA of the Act, a contract shall not be entered into by an Accounting Officer with a provider during the period of administrative review, Counsel submitted that the administrative review period ended when the Authority made its decision on 15<sup>th</sup> December 2014. Counsel submitted that the review by the Tribunal is an independent process and not a continuation of the administrative review process envisaged under section 90 of the Act; that the review process at the Authority and the Tribunal are independent processes.

- 4.35 On the question from the Tribunal about the ten (10) days period allowed to aggrieved bidders to appeal a decision of the Authority by section 91L (1) (c) of the Act, Counsel argued that the Act should have provided a clear provision on when an awarded contract should be signed or not signed.
- 4.36 In resolving this issue, the Tribunal relied on sections 90 (1) and (7), 91(4) and (5), 91I (1) and 91L (1) (c) of the Act.  
Section 90 (1) of the Act provides that a bidder who is aggrieved by a decision of a procuring and disposing entity may make a complaint to the Accounting Officer of the procuring and disposing entity.
- 4.37 Section 91 (4) of the Act requires the Authority to issue its decision within twenty-one (21) working days after receiving the complaint. Section 91(5) provides that a bidder, who is not satisfied with the decision of the Authority given under subsection (4), may appeal against the decision, in accordance with Part VIIA of this Act.
- 4.38 Section 91 I (1) of the Act which falls under Part VIIA of the Act provides that a bidder who is aggrieved by a decision made by the Authority under section 91(4), may make an application to the Tribunal for a review of the decision of the Authority. Under section 91L (1) (c), an application to the Tribunal for review of a decision of the Authority made under section 91 I shall be lodged with the Tribunal within ten working days of being served by the Authority with its decision.
- 4.39 From the chronology laid down in the provisions cited above that the review process at the Tribunal arises from the administrative review process by the Authority.

- 4.40 The Tribunal disagrees with the argument advanced by the Authority to the effect that the administrative review process came to an end after the Authority cleared the OPM to go ahead with the procurement. The Tribunal finds that the administrative review referred to in section 90(7) includes the review process at the Tribunal. Accordingly, section 90(7) which provides that a contract shall not be entered into by an Accounting Officer with a provider during the period of administrative review should be complied with by procuring and disposing entities after they have received notification of an application to the Tribunal for review of the decision of the Authority.
- 4.41 Section 90(7) (b) of the Act further explicitly bars Accounting Officers from entering a contract with providers before a decision is made in accordance with Part VIIA of the Act. Part VIIA of the Act is the Part of the Act that provides for, among other matters, proceedings before the Tribunal.
- 4.42 The Tribunal also notes that the Act allows 10 working days within which a person aggrieved by a decision of the Authority may apply to the Tribunal for review of the decision of the Authority. Accordingly, procuring and disposing entities should respect that period by restraining themselves from entering into any contracts before the ten working day period expires as doing so could be seen as an intention to render proceedings before the Tribunal nugatory as well as a denial of a bidder's statutory right to obtain redress of a decision made by the Authority. The Tribunal directs that whether or not there is an ongoing administrative review, the Accounting Officer should not sign a contract with a provider during the ten working day grace period allowed for appeal to the Tribunal. In other words there should be a ten working days cooling off period after a decision by the Authority before an Entity enters into any binding legal obligations in the form of a contract with a bidder

4.43 The Tribunal directs the Authority, as the body mandated by section 7 (1) of the Act to administer and enforce compliance with all the provisions of the Act by issuing and Gazetteing guidelines in accordance with its statutory mandate under section 97 of the Act to all procuring and disposing entities notifying them of the direction to refrain from signing any contracts or entering into binding obligations prior to the expiry of the ten day period allowed for appeal to the tribunal and also for the period during the review of any application before the Tribunal.

4.44 The Tribunal further directs the Authority to notify the Solicitor General or any relevant Accounting officer of any pending matter before the Tribunal to ensure that contracts are not entered into during the pendency of matters before the Tribunal.

4.45 In the present case, the Tribunal restrained itself from cancelling the contract signed during administrative review period because it had regard to the repercussions on Government of such order as well as the fact that the , Applicant had not complied with the law in seeking redress.

#### ***4. Remedies***

4.46 In the Application to the Tribunal, the Applicant prayed to the Tribunal to exercise its jurisdiction to handle the grounds raised by the Applicant in the Application. The Authority on the other hand prayed that the appeal by the Applicant lacks merit and should be dismissed with costs.

4.46 The Tribunal has already found that the failure on two occasions by the Applicant to pay administrative review fees to the Accounting officer was a blatant violation of the Act and administrative review regulations. Accordingly, the Tribunal agreed with the decision of the Authority not to hear the merits

of the Applicant's case since it had not complied with the administrative review procedures. Accordingly the Applicant's application is dismissed.

#### **5.0 DECISION OF THE TRIBUNAL**

1. The Tribunal affirms the decision of the Authority declining jurisdiction to hear the merits of the Applicant's application on account that the Applicant did not pay administrative review fees to the Accounting Officer.
2. Officers of Procuring and disposing entities are directed to refrain from entering into contracts with providers prior to the expiry of the ten working day period allowed for appeal to the Tribunal under section 91L (1) (c) of the Act; and also before the Tribunal makes a decision in an Application for review to the Tribunal in accordance with section 90(7) (b) of the Act.
3. The interim Order contained in our letter dated 15<sup>th</sup> January 2015 is hereby vacated.
4. Each party shall bear its own costs.

*Dated at Kampala this 12thDay of February 2015.*

SIGNED by the said  
OLIVE ZAALE OTETE

SIGNED by the said  
MOSES JURUA ADRIKO

SIGNED by the said  
DAVID KABATERAINE

SIGNED by the said  
ARCHITECT JOEL KATEREGGA