

**THE REPUBLIC OF UGANDA
PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS
APPEALS TRIBUNAL**

APPLICATION NO. 12 OF 2023

BETWEEN

PRUDENTIAL ASSURANCE UGANDA LTD:..... APPLICANT

AND

BUSITEMA UNIVERSITY:.....RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE
PROCUREMENT PROVISION OF MEDICAL INSURANCE SERVICES
TO UNIVERSITY STAFF UNDER PROCUREMENT NO.
BU/NCONS/2022-23/00413 USING OPEN DOMESTIC BIDDING**

**BEFORE: FRANCIS GIMARA S.C, CHAIRPERSON; NELSON
NERIMA; THOMAS BROOKES ISANGA; GEOFFREY NUWAGIRA
KAKIRA; PAUL KALUMBA; AND CHARITY KYARISIIMA,
MEMBERS**

A. BRIEF FACTS

1. BUSITEMA UNIVERSITY (the respondent) initiated a procurement for the tender for the *provision of medical insurance services to University staff under procurement no. BU/NCONS/2022-23/00413* using open domestic bidding on April 2, 2023.
2. Four firms namely, *Prudential Assurance Uganda Ltd* (the Applicant), *UAP Old Mutual Insurance (U) Ltd*, *Jubilee Health Insurance Company of Uganda Ltd* and *AAR Health Services (U) Ltd* submitted bids.
3. Upon conclusion of the evaluation process, *UAP Old Mutual Insurance (U) Ltd* was awarded the contract at a price of UGX. 444,747,500/= all taxes inclusive. The Best Evaluated Bidder Notice was displayed on May 12, 2023, with a removal date May 25, 2023.
4. The Best Evaluated Bidder Notice indicated that the Applicant's bid failed at technical evaluation due to:
 - *Failure to submit an acceptable service provision proposal and well-presented methodology on how the medical services shall be provided with unique responses to emergencies, management of inpatient and outpatient clients, patient care, a complex treatment that requires referral to international hospitals and response to patients' needs.*
 - *The audited financial statements for years 2022 and 2019 showed that the firm made losses. This cast doubt on the financial capacity of the firm to execute the contract.*
5. The Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer on May 23, 2022.

6. The Accounting Officer in a letter dated May 24, 2023 (but emailed to the applicant at 1805 hours the same day) advised the Applicant to pay administrative review fees before close of business on May 25, 2023, to enable the review to be commenced.
7. The Applicant paid administrative review fees on May 30, 2023. The payment receipt was submitted to the Respondent by email on May 31, 2023 and hard copy on June 2, 2023.
8. In a letter dated May 31, 2023, the Respondent informed the Applicant that the administrative review process could not be commenced when administrative review fees are paid after the expiry of the Best Evaluated Bidder Notice. The Entity offered to refund the fees so far paid.
9. The Applicant being dissatisfied with the decision of the Respondent, then filed the instant application with the Tribunal on June 16, 2023, seeking to review the decision of the Respondent.
10. The Respondent filed a response and averred that the Applicant paid the administrative review fees out of time and the Respondent therefore acted within the law when it disallowed the application.
11. UAP Old Mutual Insurance (U) Ltd, the best evaluated bidder, as an interested party, filed a letter in which it averred that it was entitled to the contract award; and that the Application was incompetent and out of time.

B. ORAL HEARING

The Tribunal held an oral hearing on July 6, 2023 via zoom software. The appearances were as follows:

Mr. Arthur Esimat- Business Development Prudential appeared for the Applicant.

Mr. Matsiko Albert the University Secretary appeared for the Respondent.

Mrs. Nambejja Ruth, the Legal Officer UAP Old Mutual Insurance (U) Ltd appeared for the Best Evaluated Bidder (UAP Old Mutual Insurance (U) Ltd).

In attendance were;

Mr. Paul Nagemi- Chief Health Officer of the Applicant, Mr. Boaz Amutuhire- Agent Prudential, Mrs. Doreen Kabagambe- Legal Officer Prudential, Mr. Fred Osiale- Agent Prudential, Mr. Allan Ojara- Sales & Administration- Prudential and Mr. Henry Kasadha Procurement Manager of the Respondent.

C. RESOLUTION

1. The Application did not frame any issues for determination by the Tribunal. However, from a reading of the Application and responses, the following issues are framed for determination:
 - 1) Whether the Application is competent?
 - 2) Whether the Respondent erred when it disqualified the applicant's bid.
 - 3) What remedies are available to the parties?

Issue No.1:

Whether the Application is competent?

2. The notice of best evaluated bidder is dated May 12, 2023 and was displayed on the same date. Regulation 4 (1) (a) of the *Public Procurement and Disposal of Public Assets (Contracts) Regulations 2014* requires the notice to be sent to all bidders who participated in the bidding process. The unchallenged evidence of the Applicant is that it received the Notice of best Evaluated Bidder by email on May 16 2023.
3. Under section 89(3)(b) of the *Public Procurement and Disposal of Public Assets Act*, the Applicant had ten working days from May 16, 2023 to make an administrative review complaint to the Accounting Officer of the Respondent.

4. The Applicant being dissatisfied with the evaluation process, applied for administrative review before the Accounting Officer of the Respondent on May 23, 2022. The application was within time.
5. The complaint was made on the letter head of the Applicant which indicated the email address of the Applicant as customercare@prudential.ug. The Respondent was therefore entitled to communicate with the Applicant using that email address.
6. An Applicant for administrative review must pay fees as required under section 89(3) (a) of the *Public Procurement and Disposal of Public Assets Act* and regulation 11 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations 2014*. The Accounting Officer in a letter dated May 24, 2023 and emailed to customercare@prudential.ug at 1805 Hours the same day, advised the Applicant to pay administrative review fees through the URA portal before close of business on May 25, 2023 to enable the review to be commenced. The Applicant paid administrative review fees on May 30, 2023. The payment receipt was submitted to the Respondent by email on May 31 2023 and hard copy on June 2, 2023.
7. In a letter dated May 31, 2023, the Respondent's Accounting Officer informed the Applicant that the administrative review process could not be commenced when administrative review fees are paid after the expiry of the Best Evaluated Bidder Notice. The Respondent offered to refund the fees so far paid.
8. It is our finding that the Accounting Officer's letter dated May 31, 2023 was a "decision" within the meaning of section 89 (7) of the *Public Procurement and Disposal of Public Assets Act*. Being aggrieved by the impugned decision, the Applicant had ten working days to apply to the Tribunal for review under section 91I (2) (a) of the *Public Procurement and Disposal of Public Assets Act*. The ten working days started to run on June 1, 2023, and lapsed on June 14, 2023.

9. The Application is challenging the decision of 31 May, 2023. The Application did not however, dispute the decision date of May 31, 2023. At the hearing, the Respondent's Procurement Manager confirmed that the decision was communicated to the Applicant on May 31, 2023 by e-mail. However, during oral hearing, the Applicant claimed that the decision was communicated by email on June 15, 2023 and promised to avail the Tribunal a copy the email. The alleged email was not availed. An email reminder from the Registrar of this Tribunal was also not responded to.
10. Even if the decision was communicated on June 15 2023 as alleged, this Application would still have been out of time. The Applicant having applied for administrative review on May 23, 2023, the last day for the Accounting Officer to make a decision under section 89 (7) of the *Public Procurement and Disposal of Public Assets Act* was June 2, 2023. The Applicant's time to apply for review before the Tribunal under section 91I (2)(b) of the *Public Procurement and Disposal of Public Assets Act* would have commenced on June 3, 2023 and lapsed on June 12, 2023.
11. From the previous decisions of the Tribunal, we have affirmed and continue to affirm that the time limits set in the *Public Procurement and Disposal of Public Assets Act* were set for a purpose, are couched in mandatory terms, are a matter of substantive law, are not mere technicalities and must be strictly complied with. There is no enabling provision within the *Public Procurement and Disposal of Public Assets Act* that accords the Tribunal power to enlarge or extend time. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished at this point in as far as the matter is concerned. See *Application No.3 of 2023 Maxol Uganda Limited vs Uganda Electricity Generation Company Limited* and *Application No. 44 of 2022, Ateker Community Energy Cooperative Ltd versus Katakwi District Local Government*.
12. Under section 91I(2) (a) of the Public Procurement and Disposal of Public Assets Act, the Applicant had ten working days to apply to the Tribunal for review of the Accounting Officer's

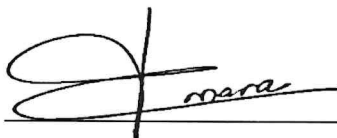
decision dated May 31, 2023. The ten working days started to run on June 1, 2023 and lapsed on June 14, 2023.

13. The instant Application lodged with the Tribunal on June 16, 2023, was therefore filed out of time set by law, and is incurably defective and incompetent. There is no need to delve into the merits of the Application.
14. **Issue no. 1 is resolved in the affirmative.**

D. DISPOSITION

- 1) The Application is struck out
- 2) The Tribunal's suspension order dated June 19, 2023, is vacated.
- 3) Each party to bear its own costs.

Dated at Kampala this 10th day of July, 2023.



FRANCIS GIMARA S.C
CHAIRPERSON



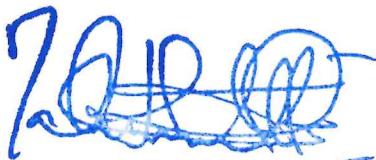
NELSON NERIMA
MEMBER



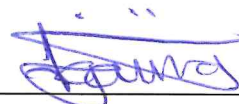
THOMAS BROOKES ISANGA
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GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



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MEMBER