

RULING

Background

On 14th December 2023, the Tribunal rendered a decision in Application No. 30 of 2023 between *K-Solutions Ltd* (the Applicant) and Ministry of Water and Environment (the Respondent) regarding the procurement for the *supply and installation of ten (10) hydrological and ten (10) metrological weather stations under the SACRiAC Project vide procurement Ref No. MWE-WSDf-E/SUPLS/23-24/0001/1/2*. The following orders were issued:

- 1) *The Application is allowed.*
- 2) *The award of the contract to Wagtech Projects Ltd for the supply and installation of ten (10) hydrological and ten (10) metrological weather stations under the SACRiAC Project (Lots 1 and 2) is set aside.*
- 3) *The Respondent is directed to re-evaluate the bids for supply and installation of ten (10) hydrological and ten (10) metrological weather stations under the SACRiAC Project (Lots 1 and 2), in a manner not inconsistent with this decision, the bidding document and the law.*
- 4) *The re-evaluation in no. (3) above shall be completed within 10 (ten) working days from the date of issue of this decision.*
- 5) *The Tribunal's suspension order dated November 24, 2023, is vacated.*
- 6) *Each party shall bear its own costs.*

The Applicant has filed the instant miscellaneous application praying that the Respondent be cited in contempt for disregarding the Tribunal's orders; and be ordered to pay general damages of Shs. 500,000,000 plus costs of the application.

According to the affidavit in support deposed by Bob Kabaziguruka, the Respondent brazenly declined to re-evaluate the bids as directed by the due date of 2nd January 2024. That on 3rd January 2024, the Applicant wrote to the Respondent on the matter of compliance with the Tribunal's orders but did not receive the outcome of the re-evaluation or response.

The Respondent filed an affidavit in reply deposed by Eng. Gilbert

Kimanzi, the Acting Director, Directorate Water Development and Acting Permanent Secretary. He deponed that the Respondent did re-evaluation of the bids within 10 (ten) working days as ordered by the Tribunal and a report dated 22nd December, 2023 was issued. Attached to the affidavit as Annexure "A" is a copy of the said re-evaluation report. That the Contracts Committee was not duly constituted until 12th January, 2024 to consider and approve the re-evaluation report since many of its members had broken off for Christmas holidays and some were officially away for their respective annual leave of absence.

That the earliest time possible for the Committee to sit was the 12th January, 2024 when the Committee sat and approved the re-evaluation report.

That upon the approval of the said re-evaluation report by the Contracts Committee on 12th January, 2024, the Respondent issued the Best Evaluated Bidder notice on 18th January, 2024. The Respondent notified the Applicant of the re-evaluation report by email.

Resolution

We have carefully studied the notice of motion, affidavit in support, affidavit in reply, and also considered the submissions of counsel and authorities cited.

In order to succeed in a civil contempt application, the following have to be proved;

- 1) That an order was issued by Court.
- 2) That the order was served or brought to the notice of the alleged contemnor.
- 3) That there was non-compliance with the order by the Respondent.
- 4) That the non-compliance was wilful or *mala fide*.

See: ***Obon Infrastructure Development Ltd vs. Mbarara City and MBJ Technologies Limited, Misc Application No.1 of 2022, arising out of Tribunal Registry Application No.20 of 2021.***

It is not in dispute that this Tribunal ordered the Respondent to re-evaluate the bids in the impugned procurement, within 10 working

days from 14th December 2023, and the decision was communicated to all parties.

The 10 working days within which to re-evaluate the bids started to run on 15th December, 2023 and lapsed on 2nd January, 2024.

The gravamen of the Applicant's claims is that the Respondent has not re-evaluated the bids within the timelines stated by the Tribunal.

Contrary to the claims of the Applicant, we have not seen any proof of non-compliance with the orders of the Tribunal.

The evaluation of bids ends with the issue of an evaluation report under regulation 35 of the *Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2014*.

The Respondent has adduced a re-evaluation report dated 22nd December 2023. This was within the 10 working days allowed by the Tribunal for re-evaluation.

The approval of the evaluation report by the Contracts Committee and issue of a Notice of Best Evaluated Bidder is not part of the bid evaluation process. The Contracts Committee does not evaluate bids. The Contracts Committee makes award decisions pursuant to section 29 (1) (c) of the *Public Procurement and Disposal of Public Assets Act* and regulation 3 of the *Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2014*.

Therefore, there was no requirement to obtain Contracts Committee approval and issue a Notice of Best Evaluated Bidder within 10 (ten) working days from 14th December, 2023.

The approval of the Contracts Committee on 12th January 2024 and the issue of a Notice of Best Evaluated Bidder on 18th January 2024 were not contemptuous of the orders of this Tribunal.

There was no legal requirement for the Respondent to respond to the Applicant's request for an update on the re-evaluation process before approval by the Contracts Committee. There is equally no legal requirement for bidders to receive notification that an evaluation has been completed and a report submitted to the Contracts Committee.

It suffices that after Contracts Committee approval, the Applicant duly received the Notice of Best Evaluated Bidder as required under

regulation 4 of the *Public Procurement and Disposal of Public Assets (Contracts) Regulations, 2014*.

In the result, we are unable to find that there was contempt of the Tribunal's order for the Respondent to complete re-evaluation of the bids within 10 working days from 14th December, 2023.

This application is therefore dismissed with no order as to costs.

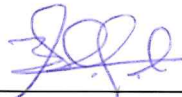
Dated at Kampala this 24th day of January, 2024.




FRANCIS GIMARA S.C
CHAIRPERSON



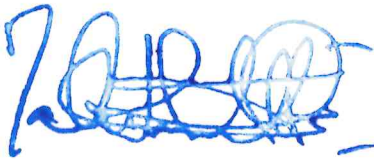
NELSON NERIMA
MEMBER



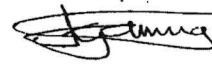
THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER