

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

APPLICATION NO. 2 OF 2024

BETWEEN

PYNET TECHNOLOGIES SMC LTD:::APPLICANT

AND

**MINISTRY OF LANDS, HOUSING
AND URBAN DEVELOPMENT:::RESPONDENT**

**APPLICATION FOR REVIEW IN RESPECT OF THE
PROCUREMENT OF ASSORTED INFORMATION AND
COMMUNICATION TECHNOLOGY (ICT) EQUIPMENT FOR
MINISTRY ZONAL OFFICES (MZOS), MINISTRY OF LANDS
HOUSING AND URBAN DEVELOPMENT, NATIONAL LAND
INFORMATION CENTRE (NLIC), MAKERERE UNIVERSITY
DEPARTMENT OF GEOMATICS AND LAND MANAGEMENT
(DMLG), SURVEYS AND MAPPING DEPARTMENT (SMD) AND
INSTITUTE OF SURVEY AND LAND MANAGEMENT (ISLM) UNDER
CEDP-AF LOT 3- PRODUCTION PRINTERS, UNDER
PROCUREMENT REFERENCE NO. PR NO: MLHUD/CEDP-
AF/SUPLS/22-23/00084.**

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

DECISION OF THE TRIBUNAL

A. BRIEF FACTS

1. Ministry of Lands Housing and Urban Development (the **Respondent**) received funding from the World Bank under the Competitiveness and Enterprise Development Project (CEDP) and initiated a tender for the procurement of assorted information and communication technology (ICT) equipment for ministry zonal offices (MZOs), Ministry of Lands Housing and Urban Development, National Land Information Centre (NLIC), Makerere University Department of Geomatics and Land Management (DMLG), Surveys and Mapping Department (SMD) and Institute of Survey and Land Management (ISLM) under CEDP-AF **LOT 3- Production Printers**, procurement reference No. PR No: MLHUD/CEDP-AF/SUPLS/22-23/00084.
2. Three bidders submitted bids for Lot 3 namely *Copy Cat (U) Ltd*, *Pynet Technologies SMC Ltd* (the **Applicant**), and *Ultra (U) Ltd*.
3. Upon conclusion of the evaluation and adjudication process, the Respondent issued a Notification of Intention to Award by email on November 3, 2023 at 4:00pm.
4. The Notification named the successful bidder as *Copy Cat (U) Ltd* at a contract price of USD \$ 283,093.80.
5. The Notification indicated that *Pynet Technologies SMC Ltd's* bid was unsuccessful for one reason to wit *Pynet Technologies submitted a bid security with expiry date of 23rd October 2023 instead of the required expiry date of 17th November 2023. Thus Pynet's bid security expires 26 days earlier than the required expiry date.*
6. The Applicant being dissatisfied by the reasons advanced in the Notification, filed a complaint before the Accounting Officer of the Respondent on **November 15, 2023**.
7. The Accounting Officer acknowledged receipt of the procurement related complaint on **November 16, 2023**.
8. The Accounting Officer issued a decision dated **December 5, 2023** regarding the Applicant's complaint but communicated the same to the Applicant on **December 7, 2023**.

9. The Applicant being dissatisfied by the decision of the Accounting Officer of the Respondent filed the instant application with the Tribunal on **January 2, 2024**, seeking to review the decision of the Respondent.

B. APPLICANT'S SUBMISSIONS

1. The Applicant filed written submissions through *Wanambugo & Co. Advocates*.
2. The Applicant submitted that the Respondent cherry-picked contents of the Applicant's Bid security. That the last paragraph on page 1 of the bid security in paragraph (ii) clearly stated that the guarantee would expire after 28 days after the end of the bid validity period and that on the 1st paragraph of page 2, it stated that the security would remain in force from 22nd June 2023 up to October 23, 2023 at 4:00pm.
3. The Applicant relied on ***Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 All ER 98*** and contended that in light of such glaring inconsistency, the bid security ought to have been read as a whole.
4. The Applicant averred that the Evaluation Committee ought to have treated the inconsistency as a non-material deviation and requested the Applicant to rectify the deviation by submitting a correct bid security pursuant to ITB 30.2 of the bidding document since the infractions were actions of a 3rd party (the financial institution) not being the bidder itself.
5. The Applicant prayed for the Respondent's decision to be set aside and a re-evaluation of bids ordered by the Tribunal.

C. RESPONDENT'S SUBMISSIONS

1. The Respondent filed written submissions.
2. The Respondent raised a preliminary objection to the effect that the Application was filed out of time.
3. The Respondent contended that bid security submitted by the Applicant had an expiry date of October 23, 2023 instead of the required date of November 17, 2023 contrary to ITBs 18.1 19.1, 19.3 and Section II of the Bid Data Sheet.

4. The Respondent averred that upon receipt of the Applicant's compliant, it promptly made a decision on 5th December 2023 but it had to subject the decision to approval of the World Bank pursuant to World Bank Reg 5.92, which process was completed on 6th December 2023. The Respondent could only communicate a World Bank approved decision to the Applicant as it did on December 7th, 2023.
5. The Respondent prayed that the Application be dismissed with costs.

D. BEST EVALUATED BIDDER'S SUBMISSIONS

1. The Best Evaluated Bidder Copy Cat Uganda Ltd filed written submissions.
2. The Best Evaluated Bidder submitted that the Applicant's bid security did not conform to all the terms, conditions and specifications of the bidding document and was therefore rightly rejected and that any attempt to correct the error in the bid security would be unfair to other bidders whose bids were already compliant.
3. That allowing the Applicant to change its bid security upon correction of errors after the deadline for bid submission constituted a material deviation and would be invalid.

E. ORAL HEARING

1. The Tribunal held an oral hearing on January 16, 2024 via Zoom video conferencing.
2. The Applicant filed written submissions on January 10, 2024 but did not attend the hearing. The Applicant's counsel sought an adjournment by letter. However, adjournments are not sought by letter. The party, a representative or counsel must appear to apply for adjournment, with, reasons. In addition, the Tribunal has a strict statutory timeline of 15 working days for delivery of decisions. Therefore, the Tribunal will proceed with the hearing of the matter in the absence of the Applicant as stipulated in regulation 25(1)(a) of the ***Public Procurement and Disposal of Public Assets (Tribunal) (Procedure) Regulations, 2016*** but will consider the Applicant's written submissions in rendering the decision in the instant Application

3. The appearances at the hearing were as follows:
 - 1) Meke Jane Margaret, Head Procuring and Disposal Unit represented the Respondent. John Obore a Procurement Specialist/CEDP, Toko Godfrey a cartographer, Lenin Victor Oonyu (Ag Principal ICT Officer), Oput Richard a Technical Advisor/CEDP, Daniel Muwanguzi the ICT officer and Richard Ahimbisibwe a Senior Procurement Officer and Owino Emmanuel, Procurement Officer were also in attendance.
 - 2) Mr. Sahil Sailesh Patel the Country Head of the Best Evaluated Bidder (*Copy Cat (U) Ltd*), Mr. Rajeev Saxena Business Development Officer, Raghavendra M Business Development Manager of the Best Evaluated Bidder was also in attendance.

F. RESOLUTION

1. The Application was by letter and did not frame any grounds or issues. In view of the submissions, the Tribunal has framed the following issues;
 - 1) Whether the Application before the Tribunal 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 before the Tribunal is competent?

1. The competence of the Application is, *inter alia*, premised on the determination of whether the Application was filed within time. See ***Application No.33 of 2023 Eclipse Edisoil JVC Ltd vs Napak District Local Government, Far Gostar Bistoon u Uganda Electricity Transmission Company Limited, Application No. 2 of 2023.***
2. Section 89(3)(b) of the *Public Procurement and Disposal of Public Assets Act*, requires a complaint to be submitted to the Accounting Officer within ten working days after the date the bidder first becomes aware or ought to have become aware of the circumstances that give rise to the complaint.

3. Under paragraph 3.1 (c) of Annex III to the *World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers November 2020* at page 62, the Borrower is mandatorily required to do the following receipt of the Complaint;
 - (i) In writing, acknowledge the receipt of the Complaint within three (3) Business Days. This acknowledgement was done on **November 16, 2023** (See *ANNEX B to the Application*) and;
 - (ii) Review the Complaint and respond to the complaint, not later than fifteen (15) Business Days from the date of receipt thereof.
2. However, Section 89(7) of the *Public Procurement and Disposal of Public Assets Act*, requires the Accounting Officer to make and communicate a decision within ten days from receipt of the complaint.
3. Therefore, in view of the provisions of section 4 (1) of the *Public Procurement and Disposal of Public Assets Act*, we find that the time given for the Accounting Officer to make and communicate a decision as stipulated in the *World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers November 2020* i.e., (15) Business Days from receipt of the complaint must prevail over the timeline of ten (10) days stipulated in section 89(7) of the *Public Procurement and Disposal of Public Assets Act*.
4. The Applicant submitted a complaint on **November 15, 2023**. The 15 Business Days for making and communicating a decision by the Accounting Officer started to run on **November 16, 2023** and elapsed on **December 6, 2023**.
5. The Accounting Officer made a decision on **December 5, 2023** but communicated the decision by email to the Applicant on December 7, 2023. A decision made by the Accounting Officer outside the statutory timelines is no decision at all and is a nullity. **See Application No. 34 Of 2023- Exposed Label Limited Vs. Uganda Civil Aviation Authority.**
6. Under sections 89 (8) and 91(2) (b) of the *Public Procurement and Disposal of Public Assets Act*, where an Accounting Officer does not make a decision within the stipulated timeframes, the bidder may make an application to the

Tribunal in accordance with **Part VIIA** of the **Public Procurement and Disposal of Public Assets Act**, within ten (10) days from the date of expiry of the stipulated period.

7. The ten days within which the Applicant could make an application to the Tribunal started running on **December 7, 2023** and expired on **December 16, 2023**. The business of the Tribunal is transacted at the Tribunal offices between 8:00am and 5:00 pm on official working days as stated in regulation **3(1)** of the **Public Procurement and Disposal of Public Assets (Tribunal) (Procedure) Regulations, 2016**.
8. The application could not be filed at the Tribunal's Secretariat on **December 16, 2023** being a Saturday and not an official working day. The next working day when the Application ought to have been filed was **Monday, December 18, 2023**.
9. For the record, the Secretariat processed and received *Application No. 35 of 2023, Passionate Ventures SMC Uganda Ltd vs Bulambuli District Local Government* on Friday, December 22, 2023 at 16:45 hours. The decision in the said application was rendered by the Tribunal on January 10, 2024.
10. Had the Applicant been prudent enough, it would have filed the Application using electronic means on the Tribunal's official email address, so as to beat the statutory deadline. Unfortunately, this was not done. See **Section 95B** of the **Public Procurement and Disposal of Public Assets Act 2003**.
11. The instant Application lodged with the Tribunal on **January 2, 2023**, was therefore out of time prescribed under sections 89 (8) and **911 (2) (b)** of the **Public Procurement and Disposal of Public Assets Act**.
12. The Applicant made an allegation in its written submissions that it attempted to file the Application with the Secretariat on Friday, December 22, 2023 but found that the Secretariat had closed for Christmas. These allegations are false, baseless, without evidence, and are therefore rejected. In any case, even if the Applicant had filed the Application on December 22, 2023 as alleged, it would still have been out of time.
13. Timelines within the procurement statute were set for a purpose and are couched in mandatory terms. There is no

enabling provision within the Public Procurement and Disposal of Public Assets Act that accords the Tribunal power to enlarge or extend the said statutory timelines. Once a party fails to move within the time set by law, the jurisdiction of the Tribunal is extinguished as far as the matter is concerned. See ***Application No.33 of 2023 Eclipse Edisoil JVC Ltd vs Napak District Local Government and Application 16 of 2023, Vital Capital Investments Limited and 2 Others v Ministry of Housing and Urban Development.***

14. The Application is time barred and incompetent. In the circumstances we shall not delve into the merits of the Application.

G. DISPOSITION

1. The Application is struck out.
2. The Tribunal's suspension order dated January 4, 2024, is vacated.
3. Each party to bear its own costs.

Dated at Kampala this 18th day of January, 2024.




FRANCIS GIMARA S.C
CHAIRPERSON



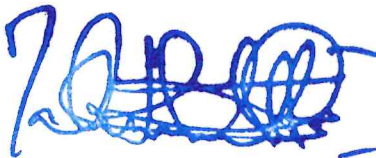
NELSON NERIMA
MEMBER



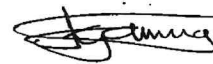
THOMAS BROOKES ISANGA
MEMBER



GEOFFREY NUWAGIRA KAKIRA
MEMBER



PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



KETO KAYEMBA
MEMBER