

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

APPLICATION NO. 6 OF 2024

BETWEEN

SAJO GENERAL STORES LTD:.....:APPLICANT

AND

SOROTI DISTRICT LOCAL GOVERNMENT:.....:RESPONDENT

**APPLICATION FOR REVIEW IN RESPECT OF THE
PROCUREMENT FOR THE COMPLETION OF A GENERAL
MATERNITY WARD IN OJOM HEALTH CENTRE II IN OCULOI
SUB-COUNTY UNDER PROCUREMENT REFERENCE NO.
SORO553/WORKS/2023-2024/00004.**

**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. Soroti District Local Government (the Respondent) initiated a tender for the completion of a general maternity ward in Ojom Health Centre II in Oculoi Sub-County under procurement reference No. SORO553/WORKS/2023-2024/00004, through open bidding method of procurement.
2. Two bidders submitted bids namely **Sajo General Stores Limited** (the Applicant) and **Japemo Holdings (U) Ltd** submitted bids in the impugned procurement.
3. Upon conclusion of the evaluation and adjudication processes, the Respondent issued a Best Evaluated Bidder Notice on December 21, 2023 with a removal date of January 8, 2024 in which it was stated that **Japemo Holdings (U) Ltd** was the best evaluated bidder with a contract price of **UGX 192,051,490/=**.
4. The Applicant being dissatisfied by the reason advanced in the Best Evaluated Bidder Notice, filed a complaint before the Accounting Officer of the Respondent on **January 5, 2024**.
5. The Accounting Officer issued a decision regarding the Applicant's complaint on **January 17, 2023**, dismissing the complaint.
6. The Applicant being dissatisfied by the decision of the Accounting Officer of the Respondent filed the instant application with the Tribunal on **January 25, 2024**, seeking to review the decision of the Respondent.

B. APPLICANT'S SUBMISSIONS

1. The Applicant submitted that its bid price was Ugx 152,167,254/= and was the lowest priced bidder compared to the departmental budget of Ugx 150,000,000/=.
2. The Applicant contended that negotiations with the best evaluated bidder would affect the scope of works and would be contrary to the law

3. The Applicant averred that the Best Evaluated Bidder Notice was irregularly removed immediately after display and that in any case, the omission to attach the authority to seek reference from bidder's bankers was not a requirement in the solicitation document or the bid notice. That the said unknown evaluation criteria was introduced during evaluation process to malice the applicant and favour its competitors.
4. It was the Applicant's submission that *Japemo Holdings (U) Ltd* was incorporated in 2018 and does not have the required experience as compared to the Applicant.
5. The Applicant therefore prayed that the Tribunal independently reviews the impugned procurement meticulously and expeditiously, sets aside the decision of the Respondent.

C. RESPONDENT'S SUBMISSIONS

1. The Respondent contended that the Best Evaluated Bidder Notice displayed on 21st December 2023 was in error, having been posted without negotiations and as such no award has been communicated to Japemo Holdings (U) Ltd yet.
2. The Respondent asserted that the Applicant omitted to submit information and documentation of authority to enable the entity seek references from the bidder's bank automatically leading to rejection of the applicant's bid pursuant to Clause 9.2 of the Bid Document.
3. The Respondent raised concern over the irregular access of confidential information regarding the Respondent's budgets since such access defeats the true purpose of a bidding process. The Respondent prayed that on that sole reason alone the Tribunal should reject the instant Application
4. The Respondent submitted that *Japemo Holdings (U) Ltd* had presented relevant Completion Certificates for four years and had executed works over the required Ugx 100,000,000/= in the last 3 years.
5. The Respondent prayed that the Application be dismissed with costs.

D. BEST EVALUATED BIDDER/INTERESTED PARTY'S SUBMISSIONS

1. *Japemo Holdings (U) Ltd* submitted that it participated in the impugned procurement as a bidder and has not received official communication from Soroti District Local Government indicating that it is the Best Evaluated Bidder
2. It was *Japemo Holdings (U) Ltd's* submission that the Applicant ought to have waited for the notice of best evaluated bidder to be displayed before seeking administrative review reliefs
3. As a result, *Japemo Holdings (U) Ltd* contended that the instant Application and the initial complaint before the Accounting Officer was premature and incompetent.

E. ORAL HEARING

1. The Tribunal held an oral hearing on January 15, 2024 via Zoom videoconferencing. The appearances were as follows:
 - 1) Mr. Alianu Stephen the Managing Director of **Sajo General Stores Limited** represented the Applicant.
 - 2) Mr. Ocen James Andrew the Chief Administrative Officer represented the Applicant. Ms. Isenyi Beatrice the Procurement Officer and Mr. Okello Simon the Senior Assistant Engineering Officer were also in attendance
 - 3) Joyce Aluga, a Director of *Japemo Holdings (U) Ltd* represented the Best Evaluated Bidder.

F. RESOLUTION

1. The Application did not frame any grounds or issues. In view of the submissions, the Tribunal has framed the following issues;
 - 1) Whether the Accounting Officer of the Respondent erred in law when he did not make and communicate the administrative review decision in the impugned procurement within the statutory timeframe?
 - 2) Whether the Respondent erred in law and fact when it disqualified the applicant's bid?
 - 3) What remedies are available to the parties?

Issue No.1:

Whether the Accounting Officer of the Respondent erred in law when he did not make and communicate the administrative review decision in the impugned procurement within the statutory timeframe?

2. It is the statutory duty of an Accounting Officer to make and communicate a decision within 10 days upon receipt of a compliant. See **section 89 (7) of the *Public Procurement and Disposal of Public Assets Act 2003* and regulation 8 of the *Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023*.**
3. **Section 71A of the *Public Procurement and Disposal of Public Assets Act 2003* provides that a procurement process and each stage of the procurement process shall be completed within the period prescribed in the regulations made under this Act. It is therefore imperative that there is strict adherence to the statutory timelines provided for in the procurement process, including the administrative review. See *Application No. 02 of 2022 APA Insurance Ltd Vs Uganda National Roads Authority, para 19, page 12*.**
4. Having received a complaint on **January 5, 2024**, the Accounting Officer was duty bound to make and communicate an administrative decision within 10 days commencing on **January 6, 2024** and lapsing on **January 15, 2024**.
5. The timelines in the Public Procurement and Disposal of Public Assets Act 2003 are mandatory, 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 Accounting Officer or a Complainant power to enlarge or extend time within which to make and communicate a decision. See ***Application No. 33 of 2023- Eclipse Edisoil Jvc Ltd Vs Napak District Local Government* and *JV AGT S.P.A & Zhucheng Dingcheng Machinery Co. Ltd Vs. Private Sector Foundation Uganda, Application No. 29 of 2022, Pages 14-15***
6. Therefore the decision made and communicated on January 17, 2024, was made outside the statutory timeframe in breach of the law and is of no legal consequence. See ***Application No. 4 of 2024- Gold Star Insurance Company Ltd vs. Uganda***

National Roads Authority and Application No. 34 of 2023-Exposed Label Limited v Uganda Civil Aviation Authority.

7. Nonetheless, where the Accounting Officer fails or omits to make and communicate an administrative review decision, and an Applicant consequently files an application before the Tribunal, the Tribunal is then seized with the jurisdiction to review the complaint originally filed before the Accounting Officer if the Application is competent. See **sections 89 (8), 911(1)(a) of the Public Procurement and Disposal of Public Assets Act 2003 and regulation 9(1)(a) of the Public Procurement and Disposal of Public Assets (Administrative Review) Regulations, 2023.**

8. **Issue no. 1 is resolved in the Affirmative.**

Issue No.2:

Whether the Respondent erred in law and fact when it disqualified the applicant's bid

9. The gist of the Applicant's complaint is that the reason for the disqualification of its bid was a departure from the evaluation criteria provided for in the bidding document.

10. The Best Evaluated Bidder Notice indicated that **Sajo General Stores Limited's** bid was unsuccessful for failing to *attach authority to seek reference from bidders banker's as required.*

11. The evaluation criteria stated in *Part 1, Section 3 Evaluation Methodology and Criteria (a)* on page 26 of the bidding document clearly required bidders to provide information and documentation of *authority to seek references from the bidder's bankers.*

12. The pleadings clearly indicate that the Applicant did not provide documentation that would authorise the Respondent to seek reference from the Applicant's bankers.

13. Information from a bidder's bankers when required and requested for in a bidding document and in the instant impugned procurement, would facilitate a procuring and disposing entity in determining whether the bidder has the financial capacity and resources to effectively execute the procurement.

14. This information forms a crucial deciding factor in the evaluation of bids and when omitted or not submitted, has the propensity to limit in a substantial way, not only the performance of the works to be procured but also affects the ability of the bidder to perform the proposed contract. This was a material deviation. See **Reg 7(4)(a) and (b) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023.**
15. Further, although the Respondent has the discretion to request for clarification of information or submission of documentation from a bidder under Section 73 of the of the **Public Procurement and Disposal of Public Assets) Act 2003** and **Reg 6 of Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023**, such a discretion is no *carte blanche*.
16. A request for clarification or documentation that if complied with, would substantially alter anything that forms a deciding factor in the evaluation of a bid is expressly prohibited under **regulations 6(3)(b) and 6(4)(b) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023.**
17. Clarification is not meant to introduce new information or documents to cure a material deviation in a bid. See Tribunal Decision in **Application No. 36 of 2022, Canaansites Ltd Vs Uganda National Roads Authority, para 34, page 17.**
18. The Applicant's bid was not substantially responsive to the minimum requirement of the detailed evaluation and was rightfully rejected at the detailed evaluation stage as stipulated in **regulation 19(4) of the Public Procurement and Disposal of Public Assets (Evaluation) Regulations, 2023.**
19. **This issue is resolved in the negative.**

Issue No.3:

What remedies are available to the parties

20. The Applicant's bid was rightfully rejected by the Respondent. The Applicant is not entitled to any reliefs.


G. DISPOSITION

1. The Application is dismissed.
2. The Tribunal's suspension order dated January 25, 2024, is vacated.
3. Each party shall bear its own costs.

Dated at Kampala this 19th day of February 2024.



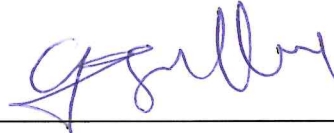
FRANCIS GIMARA S.C
CHAIRPERSON



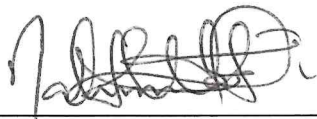
NELSON NERIMA
MEMBER



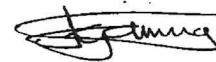
THOMAS BROOKES ISANGA
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PAUL KALUMBA
MEMBER



CHARITY KYARISIIMA
MEMBER



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